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October 1999

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The U.S. Department of Transportation recently released the 1997 drunk driving statistics and **they're the lowest they've been since the government began tracking these numbers.** In fact, drunk driving fatalities have decreased 39% since 1982.*

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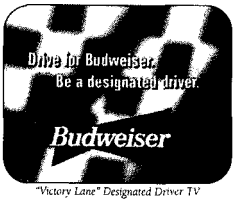

"Victory Lane" Designated Driver TV

Obviously there's still plenty of room for improvement. So Anheuser-Busch will continue its investment of millions of dollars each year in programs and activities to help prevent alcohol abuse.

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Designated Driver Billboard

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We'll be the first to admit we're not alone in the effort to curb drunk driving. Everyday there are a lot of other folks working hard to promote responsible drinking.

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By using the **Bar Code** and **TIPS** programs, servers learn to recognize signs of intoxication, make valid ID checks and intervene in potential drunk driving situations.

Our **O'Doul's Designated Driver** program encourages bars to offer designated drivers free non-alcohol beverages or food discounts. And there's **Alert Cab.** A free cab for anyone who may need a safe ride home.

Designated Driver Print Ad

Why does Anheuser-Busch offer all these programs? Because we brew our beer to be enjoyed responsibly. A message we'll drive home until drunk driving fatalities reach that perfect number: zero.

We consider that a real sign of improvement.

Anheuser-Busch, Inc.

* U.S. Department of Transportation, National Highway Traffic Safety Administration, 1998.
** Data Development Corporation, 1998.

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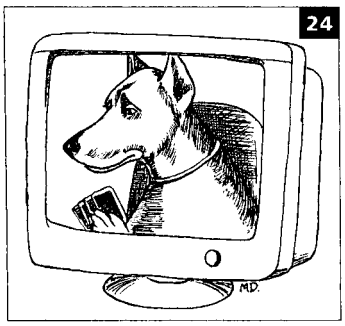

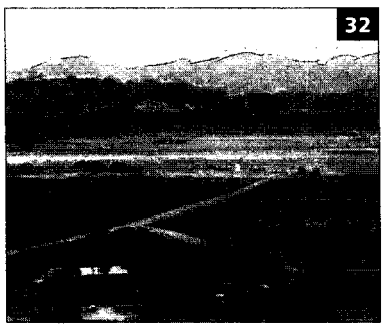

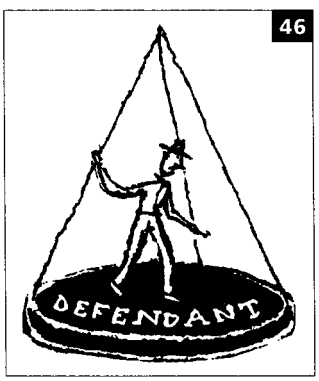

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Dangerous Remedy

By Virginia Postrel

The other problem with extending Medicare

Bill Clinton has done some incredibly reckless, irresponsible things as president. But his campaign to expand Medicare entitlements has to rank among the worst.

Unexpectedly large tax revenues are burning a hole in Clinton's pocket. He doesn't want to return the overcharge to taxpayers—that would be "irresponsible," since we might spend the money on the wrong things. But neither is Clinton content to do the sort of one-time spending that might qualify as "responsible": fixing some roads and bridges, replacing the cruise missiles he's depleted over the past few years, sending a $1,000 check to every American baby born in 2000, buying everyone in Mississippi a computer, offering a $15 billion prize to anyone who can take people back and forth to Mars. You may find such ideas wasteful, but they have one big advantage: They're finite.

Not so Clinton's Medicare plan. Imagining that Washington will be awash in extra tax dollars for at least the next 15 years, he plans to stick a new entitlement into the budget bill: coverage of prescription drugs for Medicare recipients. This plan is not the sort of one-time discretionary expenditure that matches windfall revenue with windfall spending. It is an open-ended obligation designed to keep expanding federal spending well into Chelsea and Monica's middle age.

Clinton's drug entitlement would cover half of up to $5,000 in annual prescription expenses, with no deductible. To get the coverage, retirees would pay a monthly premium of $44. The plan also includes price controls by the back door, stipulating that Medicare recipients must get their drugs at the best prices negotiated by private insurers or large public employers.

The administration fantasizes that this open-ended commitment will be "responsibly" financed "mostly by savings from competition and efficiency," plus $45.5 billion in presumed budget surplus over the next 10 years. The wonks in the White House couldn't possibly believe this nonsense—while we're at it, let's add a few Army divisions financed by cutting back on Pentagon "waste, fraud, and abuse"—but they know that once an entitlement is law, money will be found, one way or another, to keep funding it.

Anyone who thinks the plan will stay even this modest hasn't boned up on the history of Medicare. Back in 1965, when the program was new, expert projections were that it would cost $12 billion in 1990, after adjusting for inflation. It actually cost almost 10 times that much: $110 billion. If you offer people something for free, they have a tendency to demand more and more of it. As Robert Helms of the American Enterprise Institute has aptly commented, "If there is a lesson to be learned from the history of Medicare, it is that although government-financed health care has enormous appeal to most politicians, the popularity of a program does not repeal the laws of economics." (For more on the unheeded warnings of 1965, see "The Medicare Monster," January 1993, available at www.reason.com/9301fe.sh.the.html.)

Clinton knows all this. As far back as his pre-inaugural Little Rock economic conference, he has repeatedly said that exploding medical entitlements are the biggest problem facing the federal budget. His ill-conceived, ill-fated national health insurance plan was in part an attempt to rein in Medicare. It involved not just universal coverage but price controls and rationing mechanisms.

That was then. This is now.

There's nothing left to the Clinton administration but pure political calculation. Unlike the recession years of 1991 and '92, when there was some genuine public demand for national health care, no one is screaming for new Medicare handouts. Rather, this campaign has been cooked up by smart political operatives to help Democratic congressional candidates bash Republicans and buy votes. The "greatest generation" of World War II believes in government largess as a matter of New Deal principle and personal interest—and votes in much larger numbers than its cynical children and grandchildren. So the House Democratic Caucus is ginning up "studies" of prescription drug prices in district after district, all designed to create discontent among Medicare recipients and make Democratic representatives look good when they promise half-price drugs and price controls to boot.

The administration calculates that the Republicans will be too afraid to say no to this new entitlement, especially if it means giving up their tax-cutting plans. So it's going to bargain hard at budget time, trading a short-term tax cut (aren't they all?) for an infinite commitment to socialized pharmaceuticals.

For the sake of our future health care, we can only hope that the Republicans don't blink—despite the significant political dangers. Runaway spending is the least troubling part of expanding Medicare.

Medicare is a monopoly, a central-planning bureaucracy grafted onto American health care. It exercises a stranglehold on the health care of all Americans over 65, and on the medical practices of almost all physicians. Medicare decides what is legitimate and what is not: which prices may be charged and which services may be rendered.

The 110,000 pages of Medicare regulations and paperwork—more than a quarter of them added since 1994—make the income tax system look simple. The system sets reimbursement prices according to a quasi-Marxian theory of value, the "resource-based relative value scale," that has nothing to do with supply and demand. Medicare is immune from the competitive pressures that force private insurers to pay attention to what patients and doctors want.

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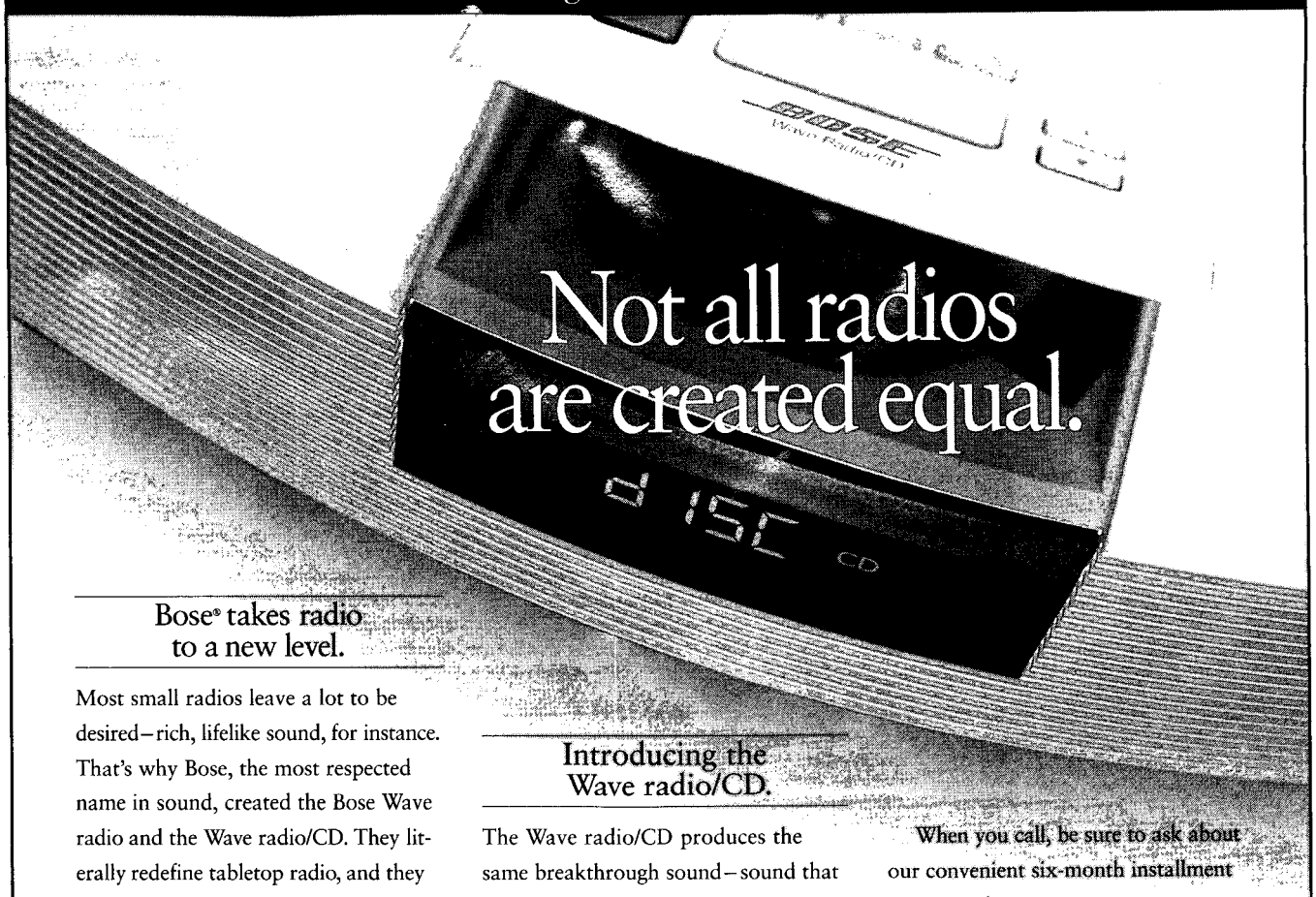

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The Clinton administration boasts of its crackdown on "fraud and waste," and it plans to apply the savings to its new drug goodies. But what's "waste" to Medicare planners includes a lot of services that physicians recommend; nearly 20 percent of the physician and supplier claims denied in 1997 were for services that Medicare considered "medically unnecessary." Someone had prescribed those services. Maybe the treatments were necessary, maybe they weren't—but seniors have no alternative insurer to go to. And when Medicare denies a hospital claim, it takes nearly a year for a patient to get an appeal processed. The public and politicians scream about private managed care, while Medicare's equally cost-driven decisions get a free pass. The media ignore Medicare's operating details.

Meanwhile, doctors who regularly recommend services that Medicare won't cover—but that patients pay for themselves—can wind up in trouble with the law. The government can tell physicians to cut back on such "unnecessary" services, under the threat of imposing civil fines or kicking the offending doctors out of Medicare (and thus out of serving most patients over 65).

In short, Medicare not only is a monopoly. It acts like one—with high-handed disregard for the patients it serves. "It is doubtful that private-sector managed care plans, faced with even minimal free-market competition, could have imposed most of [the Medicare oversight agency] HCFA's highly aggressive cost-containment measures without hearing a resounding public and political outcry," writes Dr. Sandra Mahkorn in a report for the Heritage Foundation. "Medicare's large and growing captive membership provides effective immunity from the consumer pressures regularly experienced by private-sector plans."

Instead of finding ways to check this monopoly power (or to get patients to take more financial responsibility for their own insurance), the Clinton administration is trying to expand it—to warp drug markets as it has warped physician services. This is scary. It threatens to curtail pharmaceutical development, not just through the inevitable price controls but also by deciding which medications are "necessary." It replaces the competitive interplay of medical supply and patient demand with the pressures of politics and bureaucracy. This is particularly disturbing because drug innovation worldwide depends on the existence of relatively free pharmaceutical markets in the United States.

Taking medicine out of the marketplace sounds humane to many people. Health care, they feel, is too important to be a matter of dollars and cents. We ought to be entitled to it. That feeling is what Medicare is all about.

But the alternative to marketplace medicine isn't infinite quantities of top-flight health care for everyone. It's political rationing: letting a monopoly decide which treatments are truly necessary and which patients worthy of them.

The Clinton plan calls for a test run covering smoking cessation programs, no doubt a worthwhile treatment for many patients. But how hard is it to imagine Medicare making such treatments mandatory, as a condition for future cancer coverage? How hard is it to envision a world in which certain cancer treatments are not deemed necessary, or worthwhile, for smokers—who, after all, brought their problems on themselves? If we can make young people wear motorcycle helmets because we just might have to pick up the medical costs of an accident, why not deny high-tech treatments to old people whose actions have made them sick? These questions are not going to get any easier as medical care advances in amazing directions over the next few decades.

The science fiction writer Bruce Sterling is haunted by fears of gerontocracy. He fears that as science extends longevity, old people will hold all the cultural, political, and economic power, crushing the aspirations and creativity of the young. It is a grim vision of what many people would see as a promising future—the longer life for which humanity has always yearned. To make it work in his novel *Holy Fire*, Sterling has to add another ingredient: No one can buy medicine in the marketplace. It is allocated by wise bureaucrats who reward those who take no chances with their health—or with anything else.

A risk-prohibiting world would be a strange legacy indeed for a man as reckless as Bill Clinton. But expanding Medicare is a step in that direction.

Hillary's Generation Gap

Why Social Security reform withers on the Beltway

By Nick Gillespie

Hillary Rodham Clinton may not win her bid for a U.S. Senate seat from New York (in fact, according to some, she still may not run). As the decidedly mixed reactions to her psychobabble-filled comments in the inaugural issue of *Talk*—not to mention her disastrous tryout as national health care czarina—suggest her political instincts are far from perfect. But there's no question that she understands why Social Security and Medicare are popular, and why there will likely be no serious reform of those programs until they actually collapse under their own fiscal contradictions.

In a March speech at the National Education Association's Women's Equality Summit, Clinton laid bare why old-age entitlements remain inviolable despite widespread acknowledgment that they are both inefficient and unsustainable. Social Security, she said, is a "family protection system" that keeps families together by keeping generations apart.

"Were it not for Social Security," she elaborated, "many of us would be supporting our parents. We would take them in, we would do what we needed to do to try to provide the resources they required to stay above poverty, to live as comfortably as we could afford."

While one might think this is precisely the sort of extended family situation the author of *It Takes A Village* would valorize, nothing could be further from the truth. "That would cause a lot of difficult decisions in our lives, wouldn't it?" she observed. "There would be many families who would have to choose between supporting a parent—an elderly parent—and sending a child to college. It becomes even more pronounced if we add Medicare into that equation....[Supporting parents or grandparents] would mean an economic responsibility and an economic burden that we would feel required to shoulder."

No one, Clinton implies, wants that: not seniors, not their middle-aged children, and not their grandchildren. In suggesting this, she is playing generational politics at its most brazen—and its most effective. She explicitly pits college hopefuls against retirees in a sort of death match, with the baby boom generation standing in as the beleaguered yet altruistic referee (a scant 15 years or so from retirement themselves, boomers have more reason than not to maintain the status quo). After conjuring images of resentful teens and needy elders fighting over the remote —if not food, clothing, and shelter—in family rooms across the country, she offers up a rationale that everyone can not only live with but feel good about:

"In a very real sense, Medicare and Social Security say to our older people: We're going to help you remain independent ...because of what you've done for our country—the families you've raised, the jobs you've held, the incomes that you've contributed to the United States, the wars you've fought—we're going to help, as a nation, to support you. And by doing so, we're going to free up the resources that might otherwise have to come directly to you from your family, so that they can do what you did—raise the next generation, send their children to college, hold down the jobs that enable them to move forward."

Clinton's scenario is, of course, simply mumbo-jumbo. The money to "free up" those "resources" comes from the very people to whom she's pandering. It comes from the 15.4 percent payroll tax, split between employee and employer, on the first $72,600 of every individual's wages. Had "older people," whom she seems to assume have no savings or retirement benefits apart from Social Security, not been forced to pay into a system that produces negative returns compared to private-sector pension plans, it's unclear how much largess they would require from their children or grandchildren. If "younger people" were allowed to invest their FICA taxes, they might throw off enough wealth to comfortably support Grandpa. True to her boomer roots, Clinton's encomium to senior citizens is undercut by her barely concealed hostility at the thought of "shouldering" responsibility for them, even as she lays the groundwork for today's youth to support her cohort in its old age.

But Clinton offers each group—the young, the middle-aged, and the elderly—good reason not to mess with whatever programs deliver such "independence," however fictive that autonomy might be. And in so doing, she helps explain why, precisely at a moment when the country is flush with cash and might seriously reform programs set to start imploding within a decade or so, that conversation seems to have lapsed into silence.

Indeed, the ongoing legislative fight over what to do with part of the federal budget surplus—the GOP-controlled Congress has proposed a 10-year, $792 billion tax-cut plan, while the Clinton administration wants to draw the line at a figure closer to $250 billion—underscores that Social Security and Medicare enjoy deep and abiding support. While Republicans and Democrats dicker over the size and scope of modest tax reform, they are in absolute agreement when it comes to preserving the "fiscal integrity" of the country's old-age programs. In fact, Republicans, who not so long ago spoke loudly about privatizing at least part of Social Security, have lately been crowing instead that the president, who "originally proposed protecting only 62% of Social Security receipts [has] bowed to GOP demands to protect 100%" of all contributions.

By articulating the reasons why Social Security and Medicare are so appealing, Hillary Clinton helps to explain why the reform talk has been replaced with something else altogether. And why it will be nearly impossible to do the same with Social Security and Medicare.

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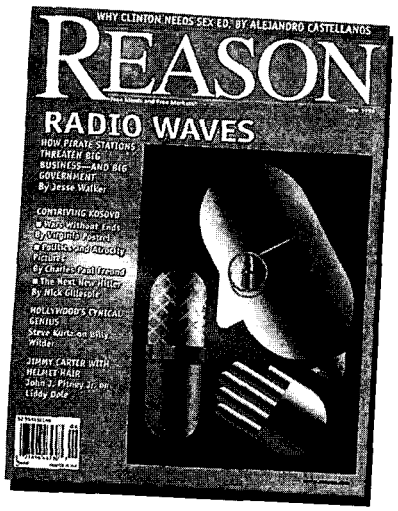

Station Battle

I am the author of the petition for rulemaking which served as the model for most of the Federal Communications Commission's plan for licensing low-power FM stations. There has been some confusion on this issue and your article mentioned it: Micro radio is not low-power FM, and low-power FM is not micro radio.

I had originally asked for a power ceiling of 3,000 watts but am quite pleased with the 1,000 watts offered by the FCC. However, I would like to see the maximum antenna height raised from 60 meters to 100 meters, which will increase coverage by another 2.5 miles.

While I understand pirate radio's effect through raising awareness of the issue, I do not condone illegal, unlicensed broadcasting. Jesse Walker's article was accurate and well thought out on many points. However, letting each broadcaster choose his or her own frequency and then work out interference problems invites havoc akin to taking down stop signs and letting drivers work it out on their own.

I have worked in the broadcast industry for more than 35 years and owned low-power TV stations for the last 10 years. Your idea of reducing power so ten 100-watt stations could operate in the same area as one 1,000-watt station is flawed technically. This may work with lightbulbs, but not radio propagation.

We have many factions within the LPFM movement, but certain technical parameters must apply to all, unless we are to scrap AM and FM entirely. Our problem at present is to find a way to keep the big corporate broadcasters from stealing all the new LPFM channels. I proposed that applicants must live within 50 miles of the proposed station, but some within the FCC have told me that this type of rule could be struck down as unconstitutional, especially given decisions handed down recently affecting the criteria used by the FCC in comparative hearings in the past.

Rodger Skinner
Skinner Broadcasting Inc.
Miami-Fort Lauderdale, FL
radiotv@cris.com

Were you out to lunch when "Radio Waves" was accepted for publication? Following are a few quotes from the article with my comments interleaved:

"A series of buyouts has swept through the industry, with the number of station owners shrinking by more than 700 in less than three years, leaving four corporations in control of more than 1,000 stations nationwide." Whenever I see numbers without sufficient data to evaluate or compare them, I'm immediately suspicious. Is that 700 (and 1,000) out of 7,000, or 70,000, or 700,000? I don't know whether to be concerned I'm being manipulated. Is it necessarily bad that conglomerates are forming, or is it merely the free market?

"The conventional wisdom blamed this on Docket 80-90, a Reagan-era rule change that had loosened the restrictions on how many operations could coexist in one market, opening the FM dial to 689 new outlets." This passage suggests that it doesn't take much to change the number of stations by 700.

"With 12,000 radio stations licensed in this country, broadcasters don't need to be told how congested the spectrum is." At first I thought that here was a number I could compare with the first one. But that was 700 station owners, and this is 12,000 stations. I still don't have a number to compare with the first one. This one (12,000) does relate to the number (689) of stations that opened as a result of Docket 80-90. That number is less than 6 percent. Hardly a fraction to be concerned about. Perhaps that's why the numbers were placed so far apart.

"So if our hypothetical station (let's call it KBIG) decides to sell itself outright to a chain (let's call it KRAP), it can. But if it wants to reduce its wattage and let an entrepreneur or civic group take over part of its previous coverage area, it will somehow have to guarantee to the buyers that the FCC will allow it to transmit to the space it has emptied."

When I read this statement, I thought I had accidentally picked up the *Utne Reader* instead of REASON. The author seems to believe that conglomerates are bad and small stations run by your neighbors are good. I thought that was for free markets to decide. In fact, the author's general prescription is not elimination of legislation, or even less legislation—just different legislation, perhaps tilted toward smaller business. The latter strikes me as favoritism.

Laurence V. Marks
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I greatly enjoyed "Radio Waves" (June). I'm a 30-year broadcast veteran who preferred to find Internet-related employment when my last radio gig came to an end in 1994. I believe that deregulation and the elimination of local competition will be the last nail in the National Association of Broadcasters' coffin. I'll never be satisfied until the government tells these bastards that they cannot own multiple facilities in the same license class in the same signal area. What an outrageous perversion of the free market and what a shameless approbation of local media monopoly! The original Communications Act has been disgraced, and Congress, NAB, and most of the brain-dead American people all have dirty hands in this matter.

Your clear thoughts and well-researched writing is a genuine pleasure and much appreciated. Thank you for writing about the stuff that matters.

Richard Irwin
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Jesse Walker replies: I never claimed, as Mr. Skinner asserts, that ten 100-watt stations could operate in the same area as a 1,000-watt station. I said that several stations of varying power levels could fit in the coverage area of a high-power station. How many would depend on topographical and other factors, and would vary from place to place.

Mr. Marks' claim that I advocate "not elimination of legislation, nor even less legislation—just different legislation" is simply weird. My article did not endorse a single new regulation. It did, however, call for eliminating a host of restrictions on starting new radio stations.

As for my figures, I was not using them to argue that four chains had a stranglehold on all broadcasting in this country, as Marks seems to imagine. (For one thing, there are more than four significant radio groups.) I was illustrating how rapid consolidation had become in recent years.

Is conglomerate radio "bad"? To my taste, it usually is. To the FCC's, it isn't. Should free markets decide? Sure, but what we have now is hardly a free market, as I spent much of my article explaining. Either I am a sloppy writer or Mr. Marks is a sloppy reader.

Scary Enclaves

In "Crime Stoppers" (June), Jim Peron reflects a scary libertarian desideratum: protection of private property and, with it, insulation from the outside world.

According to Peron, enclaves called "resident associations" and "private urban management services" have been formed that provide their own security forces and virtually everything else an autonomous community requires. The before-and-after crime statistics cited by Peron are dramatic

The enclave creation, though in response to conditions in a newly democratic and struggling South Africa, could be proffered as real-life applications of Robert Nozick's philosophic communities in his book *Anarchy, State, and Utopia*, and it also picks up on Jack Kemp's initiative, when he was HUD secretary, of encouraging the establishment of resident councils in what remained of public housing. Local residents and businesses combining to serve their own interests is laudable—up to a point. HUD's resident councils targeted drug dealing and other activities directly affecting their projects.

By championing private enclaves, Peron is shutting his eyes to the plight of most South Africans—40 percent of the blacks are unemployed—and to the enormous problems the government faces in converting from apartheid. Yes, individuals should be held responsible for their actions, including crime. But the society needs to be just and to mitigate the effects of poverty and oppression. This cannot be done by holing up and shutting out.

Denton Porter
South Long Beach, CA

Keeping Up With the Forbeses

Jack Hirshleifer's review of Robert Frank's latest book, *Luxury Fever*, pointed out a few of the many flaws in his argument against materialism ("Purchase Disorder," June). Libertarians might be even better off if it turns out Frank is right. If relative standards of well-being do indeed matter more than absolute standards above a certain minimum threshold, then the fundamental microeconomic assumption of diminishing marginal utility will have to be reexamined. In that case, the rationale for progressive taxation disappears.

If individuals all along the wealth spectrum measure themselves against their peers, then each additional dollar available to compete will be valued just as highly by cohorts at each level of income. In standard absolute terms, a more wealthy person would ordinarily value a dollar less than those further down on the economic ladder because the items that dollar could purchase would be further down his priority list. In Frank's relative terms, however, any status item that a wealthy person buys helps maintain his relative position. Frank provides no reason to believe that the consumption competition is any less fierce at higher levels of wealth, so keeping up with the Forbeses is presumably no easier than keeping up with the Joneses.

Frank might respond that taxing everyone in a given cohort the same will leave them in position to compete on equal grounds. Thus progressive taxation would leave less money available for all competitors, which would be a positive good for Frank to the extent that consumption is bad. That reply would miss the force of the objection. At all levels of income, less income would enable less consumption competition. Unless Frank can provide a good reason why competition among the superwealthy is worse than that among those with moderate incomes, he no longer has a good theoretical basis for progressive taxation.

By overlooking this dramatic implication of the relative position argument, Hirshleifer misses an opportunity to put Frank's thesis to good use.

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CORRECTIONS

■ In "Cox Reports (August/September), Rep. Christopher Cox should have said that when President Clinton met with Wang Jun in 1996, Jun was the head of a People's Republic of China arms trading firm under investigation, not indicment, for arms smuggling.

■ In "When Doves Cry" (August/September), Sen. Joseph I. Lieberman's party affiliation was misreported. He is a Democrat.

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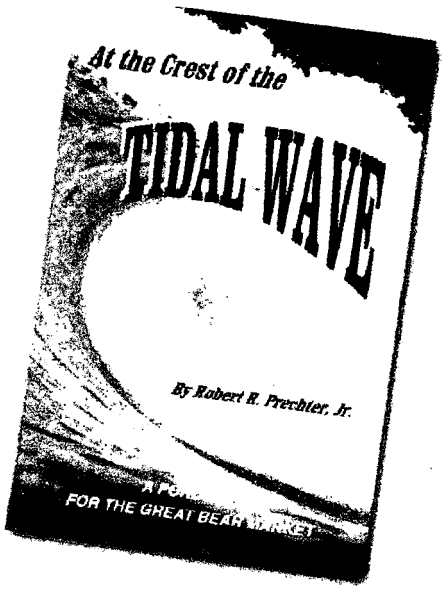

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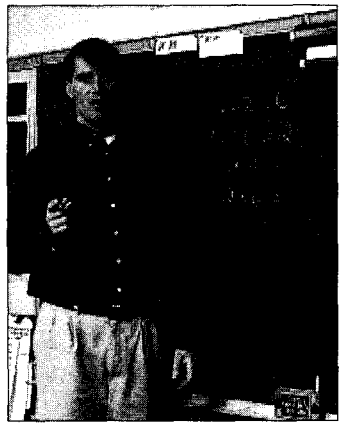
Certified Success

By Jeff A. Taylor

Despite the ongoing frenzy over how to improve public education, an important new study on teaching slipped out with little notice. Perhaps that's because the findings do not mesh with the prescriptions of the professional teaching lobby.

The study found that teachers with "emergency" credentials seem to teach kids just fine. To fill personnel shortages, especially in math and science instruction, most states allow some teachers to enter the classroom without conventional certification. The Department of Education estimates there are about 50,000 teachers nationwide with emergency certification.



"Contrary to conventional wisdom, mathematics and science students who have teachers with emergency credentials do no worse than students whose teachers have standard teaching credentials, all else being equal," conclude Dan D. Goldhaber and Dominic J. Brewer in their contribution to "Better Teachers, Better Schools," a report released by the Thomas B. Fordham Foundation, a private research group advocating education reform.

After looking at the performance of 24,000 eighth-graders nationwide and subsets of the students in later years, Brewer, an economist and director of the RAND Corporation's education program, and Goldhaber, a labor economist with the Urban Institute's Education Policy Center and a member of the Alexandria (Virginia) City School Board, found that what's important is having teachers with a strong background in the subject they teach. This radical idea—that math teachers, say, should have math backgrounds—is what passes for unconventional wisdom in the bizarro world of the educational establishment.

Indeed, President Clinton called for a ban on emergency certification in his State of the Union address this year, a reward for teachers unions which have backed Democrats so strongly. And in May, the administration proposed a plan to eliminate emergency certification over the next four years.

Funeral Flowers

By Charles Paul Freund

"We've had enough of these people," Gennifer Flowers complained to Chris Matthews on his *Hardball* talk show in August. The people we had had enough of were President and Mrs. Clinton, and the reason we'd had enough of them was that they were, as she put it, "criminals," "liars," and "murderers."

Matthews had actually invited Flowers to discuss Hillary Clinton's psychobabble remarks about her husband in *Talk* magazine. Mrs. Clinton had advanced a thesis that her husband's notorious behavior stemmed from a childhood of emotional abuse, in which his mother and grandmother had vied for his affection. The result was that he was forever attempting to please two women. Hillary having cast herself as wife/mother, it seemed natural to ask Flowers whether she had felt much like his grandmother during the 12 years she says she slept with him. Turns out she felt more like a murder target.

"Murderers?" asked Matthews.

"Well," answered Flowers, "there is a Clinton death list."

Indeed there is. It stems from a 1994 video called *The Clinton Chronicles*, which, among other accusations, suggests Bill Clinton is complicit in the deaths of scores of people. Various versions of the list have been circulating on the Internet for years, as has at least one substantial rebuttal (www.snopes.com/spoons/faxlore/clinton.htm).

Flowers announced that she'd posted a Clinton Body Count on her Web site (www.genniferflowers.com) and invited viewers to check it out. It lists nearly 60 alleged victims, including Vince Foster, William Colby, Ron Brown, Jim McDougal, and Adm. Jeremy Boorda.

Elsewhere on her site are excerpts from her remarks this year at Oxford University, where she advised her audience, "You had better

Balance Sheet

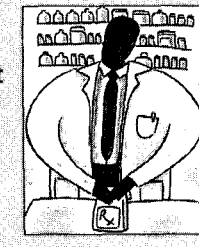
By Jeff A. Taylor

ASSETS

▲ **Private Stink.** The Washington (D.C.) Suburban Sanitary Commission discusses whether to go private and become a regulated utility. The sewer and water authority is valued at $3 billion, and a sale could bring millions in new tax revenue each year for local governments. If WSSC's 1.6 million customers were to go private, it would be one of the biggest such shifts ever in the country.

▲ **Upper Echelon.** The Italian legal system—of all things—may throw a spotlight on America's busy spooks at the National Security Agency. All of Europe is aflame over the NSA's Echelon program, a worldwide eavesdropping operation with a listening post outside London. Italian investigators want to know if what the NSA does violates their country's privacy laws. The NSA so far has stiff-armed even Congress about Echelon.

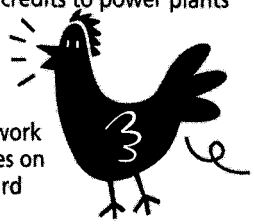
▲ **Drugged Speech.** A federal judge rules that the First Amendment applies even to pharmaceutical makers. Restrictions on what drug firms can say about off-label uses are declared unconstitutional. The Food and Drug Administration wanted prior approval for any information doctors received about new uses for approved drugs.



▲ **Surf Saver.** A high-powered who's who of the online world sets up a Web site to help parents figure out this whole Internet thing. The GetNetWise effort assumes that educated parents, as opposed to grandstanding, nanny-state politicos, can help kids navigate the cyberworld.

▼ Farm Fade. Washington plans to send $7.5 billion to farmers on top of last year's "one-time-only" $6 billion bailout. The subsidies go a long way toward undoing the Freedom to Farm Act, which sought to wean farmers off the federal teat. What should be the counterbalancing effects of low commodity prices and bad weather are this year's excuse.

▼ PEEP Show. Powerful senators back PEEP, the Poultry Energy Power Act, which would dole out tax credits to power plants that burn chicken poop. The $50-million-a-year subsidy harks back to the 1970s, when "alternative" energy sources were showered with handouts to little effect. Such plants work in Europe only thanks to sky-high taxes on energy sources. Cheap oil still beats bird crap in the U.S. of A.



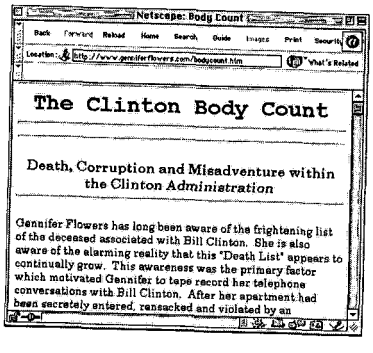
▼ Orbital Taps. The FBI puts the kibosh on a Canadian firm's bid to offer satellite phone service in the United States. The feds fear that satellite phones in general, and ones with downlink stations in other countries in particular, will prove difficult to wiretap. Requests for wiretaps, routinely rubber-stamped domestically, could face the scrutiny of a foreign government.

▼ Cluster Stuck. Some 1,100 cluster bombs, each containing 202 bomblets, were dropped by NATO during the Kosovo conflict. Normal dud rates for such munitions range from 5 percent to 20 percent. That means somewhere between 11,000 and 40,000 bombs are waiting to go off.

LIABILITIES

have some proof of what you have to say." Good advice. Pressed by Matthews for proof, Flowers had nothing to offer except her conviction that Clinton was capable of murdering her, too. "I wouldn't be sitting here talking with you today had I not become high-profile as I did," she said. "It saved my life."

The exchange was one of the most bizarre in modern political discourse. A woman who, the evidence suggests, was Clinton's mistress and confidante for 12 years, and who has seemed reasonable if not actually graceful in recent appearances ranging from TV interviews to Oxford University, suddenly publicly endorses the idea that the president is complicit in multiple murders. That he would have killed her. She has nothing to back up her assertions, but she did demonstrate one thing: Just when you thought the country had reached the bottom of what this administration had to offer, it turns out there is no bottom.


Netscape: Body Count
The Clinton Body Count
Death, Corruption and Misadventure within the Clinton Administration
Gennifer Flowers has long been aware of the frightening list of the deceased associated with Bill Clinton. She is also aware of the alarming reality that this "Death List" appears to continually grow. This awareness was the primary factor which motivated Gennifer to tape record her telephone conversations with Bill Clinton. After her apartment had been secretely entered, ransacked and violated by an

Gun Spree

By RiShawn Biddle

After the Columbine High School shootings last spring, conventional wisdom had it that there was no way to stop the U.S. Congress from passing new gun controls; the only question was how draconian the laws would be. While the drive for federal regulation remains under debate, gun owners shouldn't relax yet: Since May, three states have passed new gun restrictions and a fourth is poised to do so by year's end.

California passed both a ban on "assault weapons" and a "gun a month" law that limits handgun purchases to one every 30 days (multiple sales to individuals are now a felony). A Connecticut measure allows police to seize firearms from anyone accused of threatening "imminent personal injury" by two "credible persons" (a phrase not yet defined by the courts). And Illinois passed a law penalizing parents for having unlocked guns out at home.

New Jersey may require gun makers to sell "smart" guns that allow only their owners to fire them—even though these may not be available for years. The law, which awaits final passage by state legislators this November, will go into effect as soon as two firms bring them to market.

On the other hand, four states have taken pro-gun moves. Maine rejected a bill similar to the one passed by Illinois. Officials in Louisiana and Texas took action to stop product liability lawsuits against gun makers (blocking a suit against manufacturers filed last October by New Orleans). Texas also rejected a bill requiring background checks at gun shows. And Nevada approved a measure allowing concealed weapons to be carried in public build-▶

SOURCE

Although marijuana is the main target of the war on drugs as measured by arrests, people often assume that it's not the sort of thing you go to prison for. Yet calculations based on recent government data indicate that **some 59,300 people, 3.3 percent of the country's incarcerated population, are behind bars for marijuana-related offenses** such as cultivation, possession, and sales. Chuck Thomas of the Marijuana Policy Project offers this estimate and shows how he derived it in the June 1999 issue of the *Drug Policy Analysis Bulletin*, published by the Federation of American Scientists and available at **www.fas.org/drugs/issue7.htm**.

QUOTES

"The Communists are not adversaries of the market. The Communists have broken with the statist vision of things."
—Robert Hue, national secretary of the French Communist Party, in the July 11 *New York Times*

"A depressing number [of scientists] are greedy, unethical, selfish, egocentric, intolerant, racist, narrow-minded—all the way to evil. Scientists cheat, plagiarize, work on poison gases or for tobacco companies, advise and support tyrants and dictators."
—Physicist Leon Lederman on science and responsibility in the July 24 *New York Times*

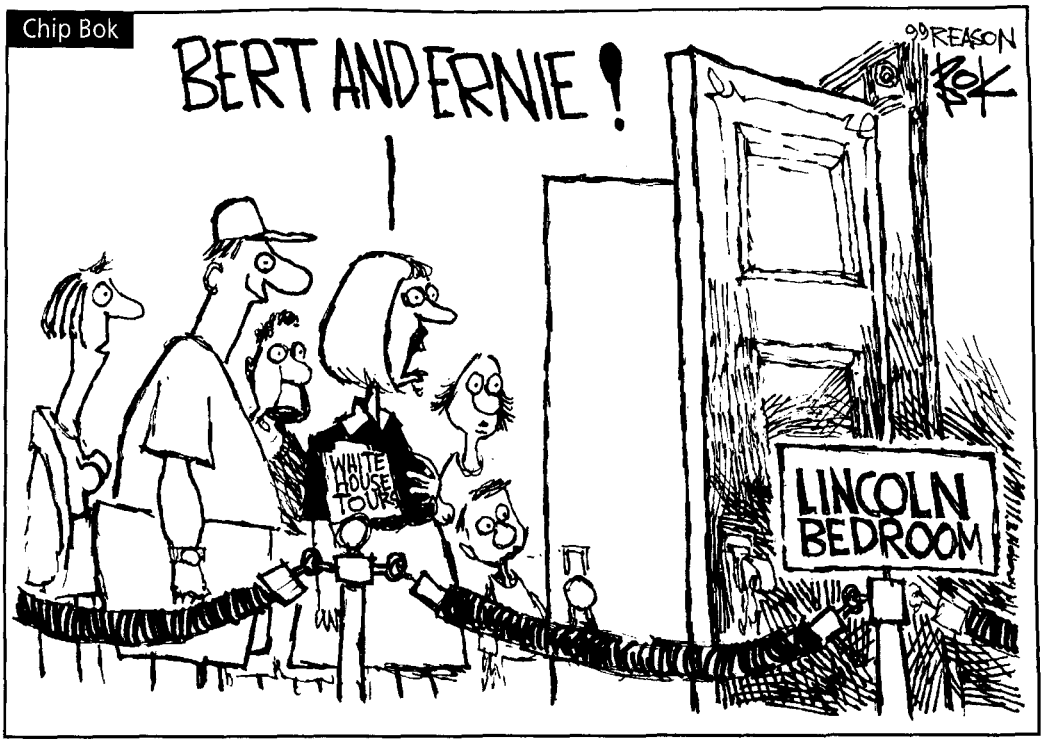
BRICKBATS

◆ G. Roger Davis, a music professor at Miami University of Ohio, has sued his employer, claiming it violated his First Amendment rights by refusing to let him wear a thong bathing suit in the school's swimming pool.

◆ All public schools and many public libraries in Utah use filtering software provided by the Utah Education Network to keep people from accessing objectionable Web sites. The UEN says its software is very effective, but it must judge effectiveness by how many sites it blocks. A new report by an Internet watchdog group found the software blocks many non-pornographic sites, including pages with information on safe sex and on legal issues involving homosexuality. The software also blocked pages devoted to the Declaration of Independence and the Constitution. The UEN says it has received few complaints about its software. But wait until people find out that it blocks sites devoted to conference reports by the Church of Jesus Christ of Latter-Day Saints.

◆ In Malaysia, married couples must now carry proof of their marriage at all times. Islamic law forbids unmarried people of opposite sexes from being in close proximity, and Muslim authorities often raid places that are suspected of harboring such malefactors. Now married couples will have cards to present to the police if they're mistakenly busted.

Chip Bok

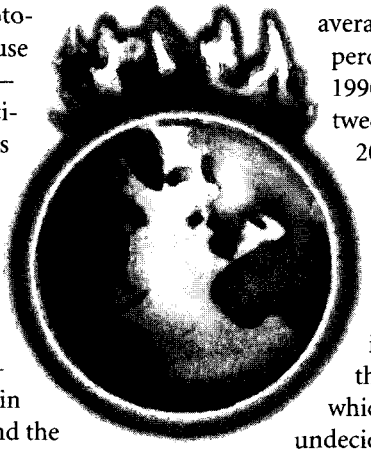


Gas Relief

By Brian Doherty

The Clinton administration proved in Yugoslavia that it's not going to sit around and wait for congressional approval before waging an actual war. It's showing the same attitude in its war on greenhouse gases.

Despite the Senate's 95–0 signal that it is not prepared to ratify the United Nations Kyoto Protocol on greenhouse gas reductions—and plenty of scientific questions about the relation between those gases and global temperatures, the likely effects of any predicted increase in temperature, and the costs of mitigating that increase—the Clinton administration is rushing ahead to implement the U.N. demands.

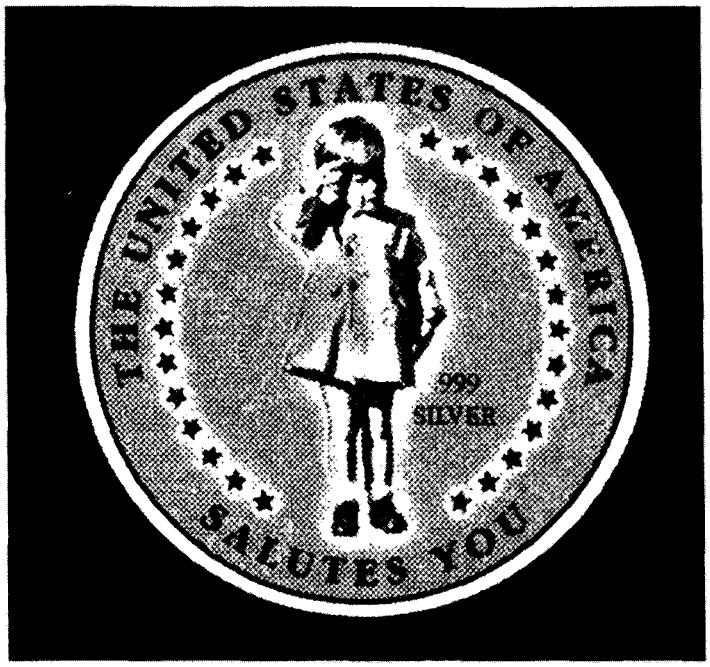


The Department of Energy estimates that if Kyoto's requirements become law, gasoline prices would average $1.91 a gallon in the United States and total electricity prices could increase as much 86 percent. The protocol, still being hotly debated in various international meetings, applies only to a list of rich, industrialized countries that will be required to reduce their total greenhouse gas emissions by an average of 5.2 percent below 1990 levels between 2008 and 2012. The Clinton administration hopes an emissions trading system, the details of which are still undecided, would help reduce implementation costs to an average increase in American utility bills of $70 to $100 a year.

In early June, the administration issued an executive order requiring all federal agencies to reduce total energy use to 30 percent below 1985 levels by 2010 and to cut greenhouse gas emissions to 30 percent below 1990 levels by the same date. The order gives an out that private business won't have under Kyoto's guidelines: Government agencies can get exemptions if the reductions prove "not practical."

Last year's appropriations bills for the Environmental Protection Agency supposedly prevent that agency from doing anything to implement Kyoto before Senate ratification. Still, the EPA has gone ahead with a project to test international greenhouse gas emissions trading with Russia. The House Science Committee is now investigating this proposal to see if it violates the nonimplementation clause.

Then again, the Senate may be moving closer to em-



Coin of the Realm

If you ask for spare change in Camelot, you'll be tossed this lachrymose "Official John F. Kennedy Jr. Memorial Commemorative," offered recently as "an important issue" from something calling itself "The Washington Monetary Authority." You're looking at the reverse of the "coin," at least as it was represented in the ads. The tribute it pays the late Mr. Kennedy, who was pushing 40 when he died, suggests that his life's singular achievement occurred when he was three years old: saluting his assassinated father's coffin in 1963. Now, reads the apostrophizing commemorative, "The United States of America Salutes You."

Kitsch has ever been the currency of Camelot. But in this case there's more. The cult of sensibility from which such products ultimately issue is the flip side of the Age of Reason. Two centuries ago, republican ideals were illustrated by literary and painterly portrayals of the pathetic. For Enlightenment "Men of Feeling," liberty and "sympathy" blossomed together. What the Romantic Victorians made of the combination, however, was a doleful landscape of cheap sentiment, one littered with the dead and dying innocents of popular melodrama.

Sad Camelot occupies that territory today. Indeed, the salutation of "John-John" was the icon of our summer. A grown man dies; we tearfully bury a child.

—Charles Paul Freund

bracing Kyoto. Sens. John Chafee (R-R.I.), Joseph Leiberman (D-Conn.), and Connie Mack (R-Fla.) have introduced an administration-supported bill that would give tradable credits for gas emission reductions to companies even before Kyoto goes into effect. Rep. Rick Lazio (R-N.Y.) has introduced a similar bill in the House. Though neither bill is likely to pass this year, they would create a new political constituency for ratification of the protocol, since the credits would be worthless unless Kyoto's demands become law.

Witching Hour

By Jesse Walker

The summer's least likely blockbuster, *The Blair Witch Project*, is also the latest sign of one of today's most promising trends: the democratization of filmmaking. The picture, which reportedly cost just $50,000 to produce, wasn't simply made outside the studio system: It took such independence for granted. Its plot, after all, involves three ordinary people who set out to make a low-budget movie, with tools that most Americans could easily borrow or buy.

This matter-of-fact independence infects the picture's style. Here at last is a fictional film that actually feels homemade—something Hollywood has tried many times but never quite gotten right. As the film's directors have pointed out, one reason older fake documentaries seem so phony today is that so many people have used cameras now. A suspiciously well-timed cut seems, well, suspicious. Not so here. *The Blair Witch Project* is hardly the first film to be made about filmmaking, but it may be the first to assume that even as it takes us behind the scenes, the audience is on familiar ground.

Gang Bang

By Mariel Garza

If you're a gang member, it's hard enough to hang out on the streets, what with all the police scrutiny and gun-toting rivals. But for 35 alleged members of the Crips in the Venice section of Los Angeles, a court order issued in July has made it tougher still just to walk out the door.

Earlier this year, the city filed a civil suit against the men and got a ruling from a Santa Monica, California, superior court judge enjoining them from engaging in certain activities in a "safety zone" comprising the gang's traditional turf. Much of the proscribed behavior is not criminal per se, but believed to be "pre-criminal." For instance, the men can't carry even legal weapons or ammo in Venice. They are also under a 10 p.m. curfew and barred from having pagers, signaling to cars while walking down the street, hanging out with known gang members, and being on private property without a note of ▶

BRICKBATS

◆ The British government has generously opened up over 4 million acres of mountain and moor land to hikers. Private owners must allow so-called ramblers access to their land without compensation.

◆ Lee Williams doesn't know how to spell *villain*, so he's suing Eternal Tattoos. Williams, a student at Michigan's Wayne State University, wanted to have the word tattooed on his forearm. The tattooist asked him how to spell the word, and that's how he wound up with *villian* on his arm. Williams wouldn't even have been aware of the misspelling but for a brighter friend who made fun of the tattoo. Now he wants $25,000 to have the word removed.

◆ Those working in the fingerprint and photo unit of the Seattle Police Department have to go through special training. They are taught to properly sit in a chair. "Take hold of the arms and get control of the chair before sitting down," read department instructions. The course was added after several employees fell out of their rolling chairs. The department says it may also add a course on how to open cabinet drawers.

◆ Al Gore might want to keep this one in mind. Norway has banned the construction of new shopping centers outside city centers. The ban is aimed at reviving downtowns, cutting sprawl, and reducing auto use.

Henry Payne

permission from the owner.

Lawyers for the defendants argue that the injunction sets the men up for constant police harassment. As one attorney told a local Venice newspaper, the order means that if the 35 men "step out of the door, they're going to get arrested."

The case has attracted organized opposition from black community groups such as the Nation of Islam—

the men named in the order are African American. While claims of racism and unconstitutionality didn't stop the injunction, they did bring early publicity to a practice that will become more controversial if and when it becomes more widespread.

Killer Weed

By Jacob Sullum

A recent report from the Center on Addiction and Substance Abuse, the prohibitionist propaganda mill headed by former Secretary of Health, Education, and Welfare Joseph Califano, is titled "Non-Medical Marijuana: Rite of Passage or Russian Roulette?"

The use of the awkward adjective *non-medical* is supposed to reassure you that Califano is not the sort of extremist who would deny cannabis to cancer or AIDS patients. But he *is* the sort of extremist who would compare pot smoking to a game in which players face a one-in-six chance of sudden death.

In a statement released along with the report, Califano declared that "teens who smoke marijuana are playing a dangerous game of Russian roulette." This grim sport is not limited to kids, according to Califano, who continued, "Parents who mistake the absence of proof for the proof of absence are playing Russian roulette with their children's lives."

So you can avoid this error, here is a clue for telling the two apart: The *absence of proof* is the problem with the CASA report, while the *proof of absence* is the wild rhetoric that indicates a lack of scientific seriousness.

Knife Fight

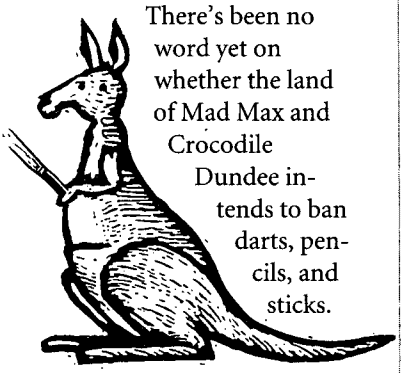
By Jesse Walker

Supporters of the Second Amendment have often suggested that gun control boosters will not rest until the private possession of guns is completely banned. They may be wrong: If recent events in Australia are any guide, the government won't stop there.

Last year, the state of New South Wales made it illegal to sell knives or knife blades to anyone under 16. Plastic knives are still acceptable. Everything else, though—from cake slicers to cutlery—

is off-limits. In Queensland, a new law prohibits carrying a knife in public without a "reasonable" excuse—a loophole that, the police minister stressed, did not include self-defense. With those two models in place, other states and territories have adopted, or at least considered, similar anti-knife rules of their own.

On the federal level, the Australian government announced earlier this year that it will crack down harder on illegal knives, thanks to a report by the Australian Institute of Criminology that revealed a rise in the percentage of murders committed with knives and—ominously—other "sharp object[s]."



There's been no word yet on whether the land of Mad Max and Crocodile Dundee intends to ban darts, pencils, and sticks.

DATA

Same As It Ever Was

By Nick Gillespie and Michael W. Lynch

Were the Littleton, Colorado, school shootings on April 20, a "defining moment in public opinion" regarding gun control, as *USA Today* has put it? Not really, write analysts for Statistical Assessment Service, a Washington, D.C.-based group that tracks the use of statistics in public policy debates, in the group's July newsletter. "The Columbine tragedy merely returned public opinion to the levels of the early '90s," they say, "after a drop in support of stricter laws to 60 percent in February 1999." They point out that significant majorities have long favored tighter controls and that the pro-control proportion correlates most closely with the nation's murder rate: "The murder rate has varied between about 8 and 10 per 100,000 throughout the '80s and '90s. The high poll numbers favoring gun-control in the early part of the period correlate to a high murder rate, while the low figures in the mid-'80s match a lower rate, followed by higher numbers as the rate moved up once more in the early '90s. The low figures reported before Columbine may reflect the recent substantial drop in the murder rate to under 7 per 100,000."

RESPONSES TO GALLUP POLL QUESTION:
"In general, do you feel that the laws covering the sale of handguns should be made more strict, less strict, or kept as they are now?"

Date	More Strict	Less Strict	Kept As Now	No Opinion
April 26–27, 1999	68%	6%	25%	1%
1993	72	5	22	1
1988	64	6	27	3
1986	60	8	30	2
1981	65	3	30	2
1980	59	3	30	2
1975	69	3	24	4

Sources: Gallup Poll, Statistical Assessment Service

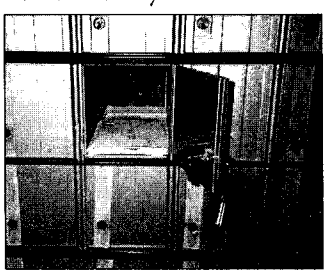
Boxed In

By Jonathan Block

Daniel Pink, a Washington, D.C.-based writer who works out of his home, receives his mail like millions of self-employed Americans and small-business owners: He rents a private mail box (PMB) at a local Mail Boxes Etc. Pink, the author of a forthcoming book on the rise of the independent contractor, likes the convenience of using the address of the Wisconsin Avenue store on all of his correspondence. But thanks to a new U.S. Postal Service rule, Pink will be forced to use the phrase PMB, rather than "Box," "Suite," or "#," before his box number on all correspondence starting in April 2000. That rule, he says, "symbolizes that you are not part of the legitimate economy."

Indeed, that seems to be the USPS position. Spokesman Norm Scherstrom says the policy change is necessary to protect consumers from fraud schemes that often involve private mailboxes (Scherstrom also pooh-poohs the widely held feeling that the Postal Service is trying to undercut competition for P.O. box customers). One major problem with PMBs, according to Scherstrom, is identity theft, which happens when someone obtains another person's vital information, uses the information to rent a mailbox, and then uses the address to secure credit cards.

Pink sees things differently. He claims that all PMB owners are now being treated like criminals because of the actions of "a few bad apples." He resents the expense and inconvenience of printing new stationery and the loss of a simple street address. He also sees it as an attack on new ways of making a living. Says Pink: "The USPS is a large bureaucracy imposing its will. This change delegitimizes a new way of working."



Equal Slime

By RiShawn Biddle

A scandal broke last May when WGBH-TV, the Boston affiliate of the Public Broadcasting Service, admitted to sharing donor lists—a common nonprofit practice—with the Democratic National Committee. The scandal grew after a series of exposés by *The Boston Globe*

BRICKBATS

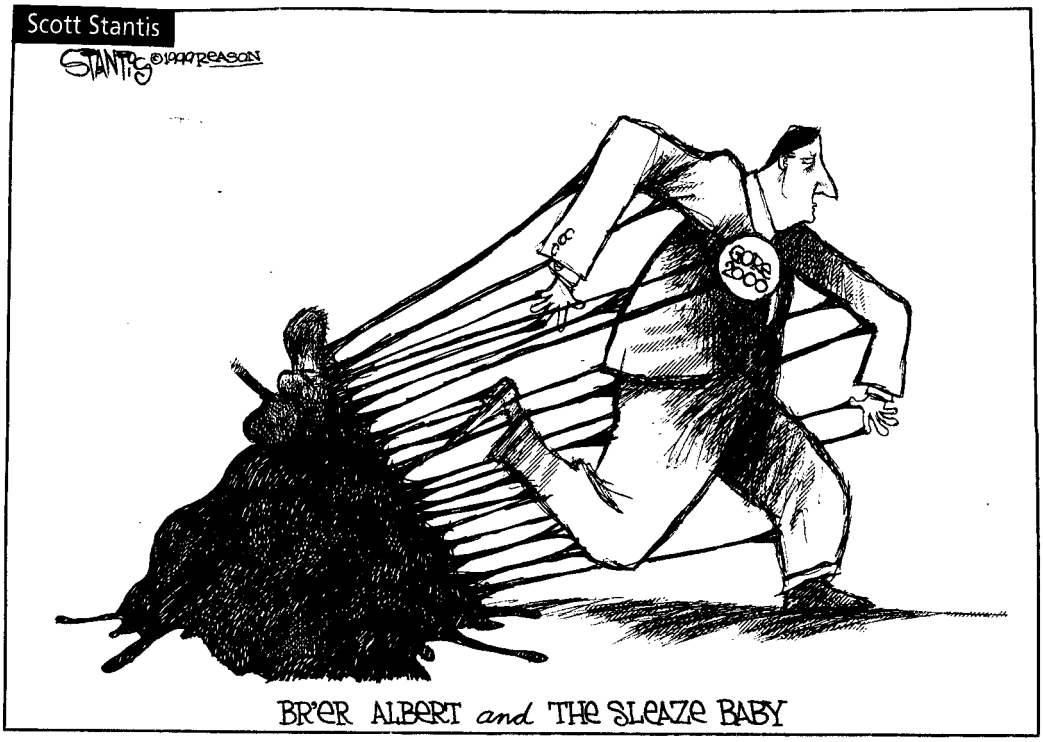
◆ Since taking power, Afghanistan's Taliban has established a harsh police state enforcing the Koran as law. It has banned music, TV, cameras, and now leather jackets. The jackets are prized during the nation's harsh winters, but religious police will slash them if they catch someone wearing them.

◆ Richmond, Virginia, has banned any "performance that appears to be pornographic if the performance might be attended by minors." The law is aimed at keeping performers such as Marilyn Manson out of the Richmond Coliseum.

◆ Fayetteville, Georgia, is a nice middle-class suburb of Atlanta. It's also home to the Rolling 5 Crackas, five teenage boys who hang out together. They have a Web page devoted to their little group. It praises whiteboy rapper Vanilla Ice as the greatest cracker around. Such behavior has them facing jail time. They've been busted under a Georgia law which makes it a crime to solicit members for a gang that commits violence. They've been charged despite the fact that they've never threatened anyone with violence and as far as the authorities know, have never done anything worse than spray-paint their names on a bridge. But the police say they have to nip these violent gangs in the bud. One boy, age 17, is charged as an adult, and faces up to 10 years in jail.

—Charles Oliver

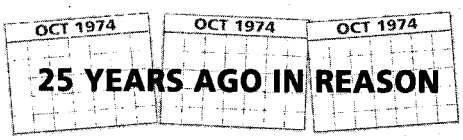
Scott Stantis



revealed the extent of the practice, the possible violations of federal tax laws, and the fact that the station was disregarding its own ethics code. The scandal spread as several other public stations admitted to similar practices.

Such revelations came at the worst possible time for the PBS gang, which was all but assured of receiving a 40 percent increase in federal funding and an extra $749 million to buy digital broadcasting equipment. The events left Rep. Billy Tauzin (R-La.), chairman of the committee that proposed the hike and the funds for the digital upgrade, and other congressional Republicans red-faced and furious. Not only did the scandal kill all hopes of increased funding for public broadcasters, but Republicans are set to prohibit future list swapping.

But wait. After the scandal broke, PBS affiliates in New York and Washington admitted to sharing their donor lists not only with Democrats but with Republican-backed groups as well. It turns out that only the Boston station, whose board includes a DNC official, didn't share their donors with the GOP.



☛"What do you mean that people would 'abuse' drugs? How? By giving themselves pleasure? Should that be forbidden?"
—"Straight Talk From Thomas Szasz: A Reason Interview"

☛"Although the issue has been the subject of heated controversy, we can see no reason why a criminal should not be prosecuted simply because he has resided in the White House for several years."
—"Reflections on Criminal Punishment and Disbarment in the Aftermath of Watergate," by Manuel S. Klausner

☛"It will be instructive for all of us to keep close tabs on Greenspan in high office, particularly to see (a) if his public statements and official reports will be any better than those of Stein, Shultz and the rest, and (b) if he has any appreciable free market effect on government policy. My guess is a firm *No* to both questions."
—"The Greenspan Nomination," by Murray N. Rothbard

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The Center of the Universe

In which our man in Washington dines with dairymen, ponders politics with gay Republicans, and investigates interns

By Michael W. Lynch

Date: Mon, June 28, 1999 11:46:59 AM
From: mlynch@reasondc.org
Subj: Expensive Dinner

"Is that John Ashcroft?" a woman asked, complaining that the dim light made it hard to identify members of Congress. I speculated that the lights were low to give the crowd of pale corporate lobbyists a simulacrum of a tan. She suggested that it was to hide the fact that we were basically in a barn—the D.C. Convention Center, one of the few facilities large enough to hold the 3,300 guests at the 1999 Republican Senate-House Dinner.

It's high fund raising season in Washington. Presidential candidates and members of Congress are rushing to pile up the dough before the June 30 filing date. So lobbyists are busy dropping off $1,000 checks at breakfasts and dinners for politicians they hope to influence. I did my part—even breaking a date with the Lovely Wife—by accepting an invitation to the $1,500-a-plate dinner. I thought it might be worth monitoring.

I attend a lot of Washington events, but this was my first $1,500-a-plater. And I must say, it differed a bit from think tank dinners. No appetizers, for one thing—not a single stuffed mushroom.

The crowd was unfamiliar as well. You get to know the faces on the wonk circuit. But I recognized few in this crowd, and it wasn't just the lighting. My host had purchased half a table, which meant that I got to eat with some strangers, representatives of the milk producers in a Midwestern state. The first course, a "goat cheese and caramelized onion tart," upset them. It's disrespectful to make cow people choose between eating goat cheese or forgoing the first course.

The audience showed an equal disrespect for the speakers, all "powerful" members of Congress. As House Speaker J. Dennis Hastert (R-Ill.) spoke, Senate Majority Leader Trent Lott (R-Miss.) standing stiffly at his side, you couldn't miss the rising din. The longer Hastert spoke, the louder it got. The room grew even louder as Lott worked through his remarks. I sat quietly, working on a glass of Columbia Crest Cabernet Sauvignon and enjoying the scene. It's hard to think of these guys as powerful while they perspire before a rudely indifferent crowd.

Why plop down $1,500 and waste an evening at such an event? It's certainly not for the video that contrasts braying donkeys with gracefully running elephants. It's not for the food, not for the drinks, and not for the company at your table, unless you happen to be seated next to an influential congressman.

I can think of two reasons. First, to buttonhole a member and apprise him or her of your concerns. (Hence the frustration with the dim lighting.) Rep. Jennifer Dunn (R-Wash.) popped by our table for a chat. We ran into Rep. John Boehner (R-Ohio) on the balcony enjoying a smoke.

Also, I imagine it is important to have one's name on the list. It's a roll call, a bed check or, more accurately, a bankroll check. But once the festivities start, there's no reason not to get into some conversation, even if the speaker of the House is trying to tell you all that he plans to do for you. It's like recess without yard narcs.

The flip side of the crowd's indifference to the speeches is that they aren't long. The entire program lasted a bit over an hour, after which it was on to the important business of dancing, slurping cocktails, and continuing conversations.

Just before I headed out, Sen. Strom Thurmond (R-S.C.) walked by with a woman who was artificially blond and artificially busty. "She's 45 trying to look 25," said a Capitol Hill reporter. "He's 96 and looks 106." Strom stopped to kiss his escort. A woman next to me said she and many of her fellow female lobbyists had been similarly "Stromed." Power still has its perquisites.

Date: Wed, July 7, 1999 11:50:40 AM
From: mlynch@reasondc.org
Subj: Hill Day

Rat-tat-tat, rat-a-tat-tat. The drummers of the "American Original Drum and Fife Corps," clad in blue band jackets and black Zorro hats, provided the cadence for 70 or so Republican congressmen and women who marched into the Ways and Means Committee Room waving miniature American flags. It was July 1, the next to last day of business before Congress adjourned for its July 4th break. What better day to celebrate a "New Declaration of Independence!," Ways and Means Chairman Bill Archer's plan to grant Americans tax relief?

To the objective eye, such an event is an absurd waste of time and an assault on any residual intelligence among those who follow public policy. The fife and drum corps, complete with Anheuser-Busch logos on the drums. The long march across the street while waving tiny flags. The group of authentic American people: young, middle-aged, and senior; brown, black, and white. The nine bundles of red, white, and blue balloons. The podium, which read in descending order: "A New Declaration of Independence!; Securing

HENRY PAYNE

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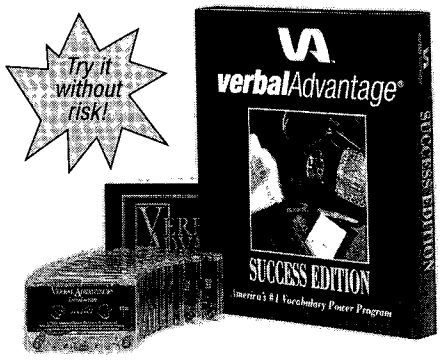

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America's Future; Strengthening Retirement Security; Freeing Families with Tax Relief." Any of these items—especially the New Declaration of Independence!—should be enough to embarrass the participants. Together, they constitute absurdist theater.

Yet it worked. Nine TV camera crews were on hand to record the event. The Associated Press story led, "Literally banging a drum for tax cuts..." The next day's *Washington Post* began, "A huge surge in projected budget surpluses had Republicans' mouths watering yesterday on Capitol Hill, as they celebrated the prospects of a new round of tax-cutting with a Fourth of July–style rally—complete with a colorful fife and drum corps."

Archer got to the nut of the issue. "What this debate is really about," said the soon-to-be-retired Texas congressman, who is responsible for writing tax legislation, "is whether we are going to downsize the power of Washington and upsize the power of the people." He then proclaimed that "broad-based tax relief" will be the dominant item in his tax relief plan, which will also address the marriage tax penalty, education capital spending, capital gains tax cuts, the death tax, and incentives for health care.

This announcement might seem mundane, but to budget and tax policy watchers, and to Republican publicists, the news was unexpected and exciting, tantamount to Federal Reserve Chairman Alan Greenspan's taking time out from reading a prepared statement to scratch his head. "We expected [Archer] to just show a little ankle," Hastert press secretary Pete Jeffries told me after the event. "He went up over the knee."

Jeffries may have sensed belatedly that Bill Archer's naked knee is not necessarily an image that sells. He was soon onto his next point. "If the market goes up today, it's because of the capital gains announcement," he said with a self-satisfied smile. "What if it goes down?" I retorted. After a brief pause, he said that would be because it was worn out from the runup the day before. (For the record, the Dow closed up 96 points. Reuters cited a "good outlook for second quarter earnings," not political promises of tax cuts, as the reason.)

Date: Fri, July 23, 1999 3:47:53 PM
From: mlynch@reasondc.org
Subj: Log Cabin Libertarians

Two and a half years in Washington and I've finally found the free marketeers in the Republican Party—they're gay.

The second Wednesday of each month, in the basement of the Rhodeside Grill in Arlington, Virginia, anywhere from 30 to 60 gay men, a few straights, and a couple of women gather under the auspices of the Log Cabin Club of Northern Virginia. I dropped by yesterday to catch the featured talk, "Freedom for All: The Case Against Employment Non-Discrimination Laws," by Nigel Ashford, a professor of American politics in England.

I assumed they had to go all the way to England to find a gay conservative willing to argue against making homosexuality a protected class under federal discrimination law. But this hunch was wrong. The vast majority of the 40 or so gentlemen and two ladies present appeared to agree with Ashford. This puts them at odds with the national Log Cabin Club and probably every other gay advocacy organization.

Two and a half years in Washington and I've finally found the free marketeers in the Republican Party—they're gay.

Bookended by a dartboard and a TV showing local news, Nigel began his talk by saying he had 15 minutes to give 12 reasons why the Employment Non-Discrimination Act (ENDA), was a bad thing. "Start with a principle," he said. It is wrong to discriminate, but it is wrong to force people not to discriminate. Since he has no right to a particular job, being denied it is not a denial of his rights. Said Nigel, "Even bigots have rights."

Nigel then laid out three more specific reasons to oppose ENDA: It's a threat to civil liberties, to society as a whole, and to gays. "It is intended to increase opportunity, but perversely, and I said perversely, not perversity, it will have the opposite effect," he said. This is because employers will be less likely to hire openly gay individuals if they fear they cannot let them go without risking a lawsuit.

So what is the proper agenda for politically active gays? Gays should work for equality before the law, Ashford said, by attacking sodomy laws and promoting gay marriage, gays in the military, and gay adoption laws. That's not exactly a Republican agenda, but then, Ashford has the benefit of being British.

Not everyone agreed with Ashford's libertarianism. A dissenter said he supported equality and therefore he wanted to be equal with minorities and women. Someone else in the audience clapped. Nigel answered that such group rights were damaging to America, adding that he thinks anti-discrimination laws for other groups should be abolished as well.

The second, and last, question, was about internal Log Cabin Club politics. A man asked Ashford to address the contradiction of people like Log Cabin Club President Rich Tafel, who call themselves libertarians but lobby for ENDA. "It's a good thing he sees himself as a libertarian," Ashford responded. "What he needs to do is read some literature to see what that means. He needs to read David Boaz's book." Boaz was sitting, looking satisfied, to my left. The room erupted in claps.

Outgoing chapter president Dan Blatt rose to give his farewell address, the only barrier between us and dinner upstairs. Blatt's vision is not of pushing a gay-friendly agenda like Nigel's. It's to work with Republican candidates on shared issues, such as lower taxes, while letting them know you're gay and that there are good gays dedicated to the party. Familiarity over time will produce acceptance.

Blatt gave an example of how this could be done. A fellow Log Cabiner had purchased one of those $1,000 tickets to George W. Bush's recent fundraiser in D.C. He made it to the rope line, and when he shook Bush's hand, he didn't advocate gay marriage, gays in the military, or any of those good things Ashford talked about. He simply said, "I am a gay

Republican. We want to work with you."

Blatt added, "My vision for Log Cabin is this: Be openly gay and proudly Republican." I wish him luck.

Date: Mon, August 9, 1999 9:39:00 AM
From: mlynch@reasondc.org
Subj: Mentoring Session

I figured it would be a tough assignment when I saw the bouncer guarding the door. I'd been to the Capitol Lounge many times, and had never before needed any papers to get into the Pennsylvania Avenue watering hole. Sixty-seven bars have been cited for serving underage patrons this summer, "this being one of them," the full-faced fellow at the door said no less than three times when I inquired about the reason for his employment.

I was on hand Friday to observe interns in action. Congress had just adjourned for the summer, and Washington's legions of interns had all been working long enough to form deep thoughts on this city, government, and the role they play in it. It would be tough to get the youngsters to talk: A *Roll Call* story at the start of the intern season had caused their Hill bosses to issue a universal gag order. I expected I'd have to wait until they got drunk. The bouncer made my job all the more difficult.

Fortunately, I didn't have to rely on complete strangers. My summer sidekick, Jonathan Block, had rounded up some colleagues. We sat down over happy-hour pints and two orders of hot wings in the basement cigar and martini lounge.

"So are you having fun?" I asked. A woman working for a legal group said she wasn't. "They are working my ass off and not giving me any respect," she said. She worked all day while the rest of her office practiced their golf game in the hallways, hitting her in the feet with errant putts and chips. "It was hell," she said.

Note to organization presidents: Don't leave the office for extended periods of time. When you take a vacation, so too does your staff, except they take theirs on the clock. I was regaled with tales of Fridays so casual that most people didn't show up for work, and those who did left early. Said a leggy 21-year-old in an Ally McBeal skirt, "If someone leaves early on Friday, everyone else has to leave also." She'd been at the bar since early afternoon.

The staff of another research organization whose president was on vacation spent the portion of the day not dedicated to a three-hour lunch playing "sardines," a version of hide-and-go-seek. Said one intern, in what I assume was a figurative expression, "The office has gone to pot."

As the evening rolled on, the $2 pints started to establish themselves. The Violent Femmes' "Add It Up" blared from the jukebox. My own intern announced that it was time for shots. I declined at first, citing my advanced age and my Lovely Wife. But I was quickly humbled into it.

Note to organization presidents: When you take a vacation, so too does your staff, except they take theirs on the clock.

Block soon took to dancing around, and then on, the pool table, with a fellow intern who managed to keep her feet on the floor. Academic looking—short straight hair, cut to no particular style, and "I read serious books" wire-rim glasses—Block's dance partner is no introverted intellectual. When her summer stint is up in D.C., she's not flying back to California. She's going Greyhound to see the country from the ground. (See "Road Trip," March.)

The Weekly Standard's Tucker Carlson claims that nobody rides the bus any more. That's just not true. She wasn't the only one. A Cato intern with a buzz cut and long sideburns told how he recently Greyhounded from Wisconsin to Salt Lake City to see a girl. He met the "neatest people" on the bus. Two of those people, an orange-haired guy and his purple-haired girlfriend, each amply pierced, were fleeing the deadening boredom of Chicago's suburban "sprawl" for the old "new urbanism" of San Francisco. They planned to live on the streets.

The interns seemed to like D.C. A fellow from Hawaii said spending a summer in Washington meant "being in the mainstream, the center of the universe." The bus bound dancer agreed. "Who could ever want to leave D.C.?" she asked.

After the shots, a fellow from Claremont McKenna College and I proceeded to thump my inebriated intern and his partner at pool. By now, the leggy intern was skillfully working the room for free drinks. She was temporarily wrapped around an athletic-looking fellow who'd recently made the transition from Hill committee staff to a p.r. firm and therefore could afford the tab.

She slinked over to check in. She didn't care if I quoted her, but wanted to be sure I described her as "leggy," a word she had earlier seen me scribble in my Looney Tunes notepad. A student at the University of Southern California, she was also interested in an internship in REASON's L.A. office. That's the spirit. You're exactly what the L.A. office, or any office for that matter, needs, I told her, as she rewarded my kindness with a hug. I said Associate Editor Jesse Walker would certainly have something for her to do, and I promised to put in a good word.

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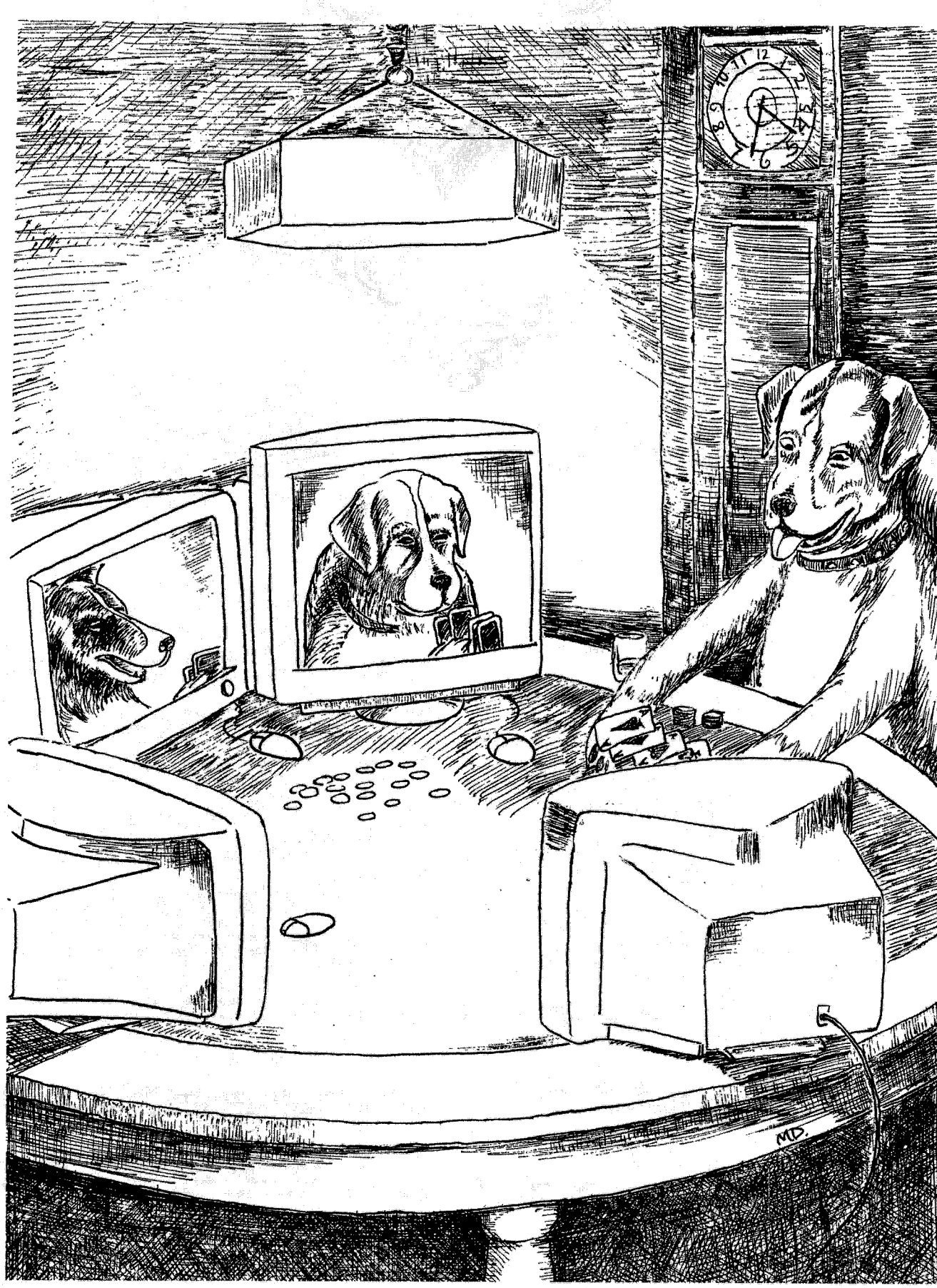

MD.

Gambler's Web

Why online betting can't be stopped—and why Washington shouldn't bother trying.

When Angel—mother, wife, and self-described "patriotic Italian-American"—feels like unwinding, she heads to the bingo parlor. But Angel (not her real name) avoids the local church's game: She doesn't like the smoke, and besides, "The crowd can get pretty vicious at Immaculate Mary's when the callers are inadequate."

Nor does she fly to Atlantic City or Las Vegas. "I'm not against that personally," she explains on her Web site. "The coffee boys in Caesar's are very buff. They can serve me in their little togas anytime. But road trips don't go over real well when you're a Mommy. You sorta hafta stay home and take care of things, *capice*?"

For Angel, the nearest bingo parlor waits on just the other side of an Internet connection. Like an increasing number of Americans, she loves the convenience and fun of online gaming. "If I choose to be a *chooch* and spend my money here unwisely, it's my choice," she writes. But if a potent coalition of lobbyists and politicians gets its way, neither Angel nor any other American will have the legal right to make that choice.

ILLUSTRATIONS: MICHAEL DANIELS

By Tom W. Bell

Though it defies exact measurement, all studies of the Internet gambling market agree that it's growing explosively. It more than doubled from 1997 to 1998, according a widely cited report by economist Sebastian Sinclair, with the number of gamblers increasing from 6.9 million to 14.5 million and revenue jumping from $300 million to $651 million. By 2001, Sinclair predicts, 43 million Internet gamblers will generate $2.3 billion in revenue. Estimates of the number of gaming Web sites vary from 250 to 1,000, ranging from online casinos to sports betting sites to lotteries, tournaments, bingo games, and sweepstakes.

Not surprisingly, the old boys' network of licensed, land-based gambling businesses does not welcome competition from this worldwide digital network. They aren't losing much money to it yet. But they will soon, and they know it.

So do their political patrons. Politicians relish the taxes that pour in from tightly regulated casinos, parimutuel tracks, and similar operations—some $3.7 billion in 1997. Net gambling, by contrast, pays virtually no taxes.

What's more, the government itself owns a share of the gambling market, with 37 states and the District of Columbia sponsoring lotteries. Those lottos earned $14.9 billion in 1997, in part by offering the worst odds of any common form of gambling. They consequently have the most to fear from online competition.

The gaming industry helps politicians fight off another sort of competitor: candidates who campaign against them. The industry's federal campaign contributions increased 447 percent during the 1990s. Its soft money and PAC contributions hit nearly $6.3 million in the 1997–98 election cycle, more than double the $2.6 million it gave in the previous nonpresidential cycle. It spent even more at the state level, the locus of most U.S. gambling policy, giving more than $100 million in donations and lobbying fees to state legislators from 1992 to 1996.

Unsurprisingly, some politicians want to restrict Internet gambling. Sen. Jon Kyl (R-Ariz.) claims that online gaming lets you "click the mouse and bet the house." His response—the Internet Gambling Prohibition Act of 1999, whose penalties include fines of up to $20,000 and four years in prison—would send a different message: "Use e-mail and go to jail."

By their plain language, several federal statutes already outlaw Internet gambling. The Federal Interstate Wire Act prohibits using interstate communications to run a gambling business. The Organized Crime Control Act of 1970 makes it a federal crime to engage in a gambling business illegal under state law. The federal Travel Act, as read broadly by the courts, criminalizes all interstate communications meant to facilitate the distribution of gambling proceeds. If Net gambling is unhindered nonetheless, this suggests not that the police lack the authority to stop it but that they lack the interest—or ability.

In essence, Kyl's law would make it illegal to send or receive bets using an interactive computer service. He misrepresents the bill as a mere update of the Wire Act. In fact, it targets online gaming for new and special penalties. It would expand the definition of a "gambling business" to include anyone who wins more than $2,000 in a day. It would also, unlike the Wire Act, make it a federal crime to gamble to and from states that have legalized the games in question. And whereas the Wire Act modestly limits its scope to transmissions "in interstate or foreign commerce," Kyl's bill targets any messages sent over a computer service connected to the Internet. It would thus cover e-mail sent across town, or even across the hall.

An earlier version of the act passed the Senate 90–10 last year, only to expire in the House when the clock ran out on the 105th Congress. This time, the prospects for passage look good. Kyl can cite support from both Republicans and Democrats, from state, local, and federal law enforcement, and from private groups ranging from the Christian Coalition to Ralph Nader's Public Citizen.

It's a funny bill, filled with telling loopholes. Kyl says he's targeting gambling because it "erodes the values of

Though it defies exact measurement, all studies of the Internet gambling market agree that it's growing explosively. Not surprisingly, the old boys' network of licensed, land-based gambling businesses does not welcome competition from this worldwide digital network. Neither do their political patrons.

C'mon Lucky Seven!

What it's like to gamble online

By Nick Gillespie

My quest for cybergambling action began around 6 p.m. and started at Yahoo!, where I used the site's "Recreation" heading to find almost 300 online casinos. Faced with such overwhelming choice (and $100 of REASON-supplied cash burning a hole in my pocket), I scrolled through the list of links and settled on the Kenny Rogers Casino. Yes, *that* Kenny Rogers—the country-singer-cum-chicken-magnate who has also portrayed a character called "The Gambler" in a series of rotten TV movies.

Such is the power of branding in cyberspace: Though I loathe Rogers—I've never forgiven him for the two hours I lost while sitting through his execrable 1982 movie, *Six Pack*—he was a devil I knew, as opposed to some faceless offshore operator to whom I'd otherwise be sending credit card information. Assuming his casino—technically headquartered in the wager-friendly Caribbean—ripped me off, I told myself, I could at least track The Gambler down and take it out of his ample hide.

As is typical with online operations, wagering at Kenny's place requires a free—though lengthy—download in order to play a variety of card games, slots, craps, and the like. I patiently monitored the process as my gambling jones grew stronger and my deadline crept nearer. After 40 minutes, the download was done, but my frustration with Kenny was far from over. When I went to install the program, there was a corrupted file, so I had to start all over. Finally, about an hour later, I was ready to register and buy some cyberchips via credit card. That turned out to be a nonstarter twice over. When I entered my actual U.S. address, I was told I couldn't gamble for "real money" and was kicked over to the electronic version of the kids' casino. Then, after I used a friend's address in a faraway country to get through the registration process, Kenny's e-cash setup wouldn't accept any of my credit cards—probably because they have U.S. billing addresses.

It was still early in the evening—around 8 p.m.—and I was still eager to rattle them bones, so I wandered over to www.wheretogamble.com and clicked on its "#1 Best Bet," a place called the Aloha Casino & Sportsbook (www.alohacasino.com), which promised a $25 bonus for opening an account and no need to download any software. Despite some misgivings—I couldn't find any mention of a physical location for the operation, only an 800 number and an e-mail address—I was ready to play. The casino accepted my credit card information quickly and automatically e-mailed me a valid user ID, and within minutes I was figuratively sitting in front of a pile of chips and mulling over what game to start with.

Our 5-year-old son tucked away for the night, my college-professor wife joined me as we sipped wine in our family room and took our chances at slot machines, video poker games, blackjack, craps, and baccarat—all running on the same laptop she's using to write a scholarly book about 17th-century female preachers. The mechanics were simple enough: Click on a game and wait a minute or so for a Java applet to load; the graphics looked like those for any standard video game.

To be sure, much of the appeal of real-world casinos—the jazzed-up lights, the tacky decor, the very specialness of the trip—is sorely lacking at home. Still, the essential appeal of gambling—that momentary thrill that comes while the wager is alive—is there in spades. And the convenience of it all makes up for most of the razzmatazz: Living outside Cincinnati, we're a good two hours from the nearest legal casinos, a group of gaudy river boats dotting the Indiana bank of the Ohio River.

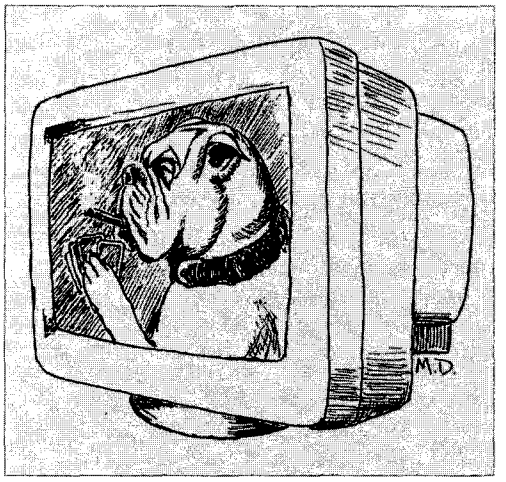
The comfort level of home is unbeatable, too. As only an occasional gambler, I'm usually intimidated from playing relatively complicated games such as craps (where wrong moves can bring down the wrath of pit bosses and fellow gamblers alike) and from staying at blackjack tables as the minimum bets rise over the course of an evening. Such concerns are absent on the Web, where you can't screw up anyone else's action and where you always set the bet (as low as 25 cents a wager at the Aloha).

Curiously, both my wife and I had confidence that the games were not rigged—or at least not any more rigged than those in real-world casinos. Our intimation of fair play was doubtless helped along by the fact that we were up over $300 at one point (due mostly to a single slots payout). As our earnings started to dwindle, the missus paraphrased Kenny Rogers, of all people, who once famously sang that a good gambler "knows when to hold 'em and knows when to fold 'em." Up about $170, we decided to cash out. We put in a withdrawal request with the cybercashier and were informed via e-mail that a check for the proper amount would be processed in a few days. If and when that happens, it's likely we'll be saying hello to the Aloha from time to time.

Nick Gillespie (gillespie@reason.com) is executive editor of REASON.

hard work, sacrifice, and personal responsibility." Yet his proposal aims selectively at those who would compete with the existing gaming industry. State lotteries, duly licensed parimutuel race tracks, and the booming fantasy sports business win broad exemptions under the bill. Casinos benefit, too, both because they participate in parimutuel betting networks and because their Megabuck shared-payoff slot machine network falls within the bill's loopholes. Even the Department of Justice criticized Kyl's bill for treating segments of the incumbent industry too favorably, arguing that "there are no legitimate reasons why these gambling operations should be exempted from the ban while other forms of gambling are not."

In June, Sen. Dianne Feinstein (D-Calif.), a co-sponsor of the bill, offered a candid explanation for the exemptions. Notwithstanding the bill's stated aim, she testified, "it became very clear that there were some legitimate interests that also needed some recognition, and so the bill does contain provisions for horse racing." A lobbying free-for-all apparently followed. "Now, the problem is that once that was done others wanted into it, and the bill contains a similar exception for dog racing, which is also dependent on wagering. Other modifications have been made to the legislation, making certain that legal fantasy sports leagues can continue to operate, and that an important source of revenue for state lotteries [is] not disrupted."



In the short run, Sen. John Kyl's anti-Net gambling bill will mean trouble for the fledgling industry, its customers, and the Internet service providers (ISPs) who connect them. But it will not stop online gambling. The very architecture of the Internet will frustrate prohibition.

A similar odor of special interest dealing hovers around the National Gambling Impact Study Commission, whose final report—mandated by Congress and published last June—wails that "millions of families throughout the nation suffer from the effects of problem and pathological gambling," including "depression, abuse, divorce, homelessness, and suicide." Since no modern political statement is complete without an invocation of "the children," the commission duly links underage gaming to alcohol and drug abuse, violent behavior, truancy, and low grades.

And what powerful, sweeping remedy does the commission propose to stop such woes? A moratorium on the *expansion* of gambling.

The incumbent industry must have raised many a toast to *that* recommendation. Though already well-protected from competition by highly restrictive licensing schemes, it would, if the commission's proposal became law, win a legal lock on the gaming market. Its would-be competitors online, not having jumped through the requisite regulatory hoops, would never even get started.

In the short run, then, Kyl's bill will mean trouble for the fledgling industry, its customers, and the Internet service providers (ISPs) who connect them. But it will not stop online gambling. The very architecture of the Internet will frustrate prohibition.

The Internet relies on a packet switching protocol that breaks each message into discrete parts and sends them over various unpredictable routes, to be reassembled at the message's destination. It's a bit like writing a letter, chopping it up, and mailing each piece separately to the same address.

Now imagine Congress ordering the U.S. Postal Service to search for and seize all correspondence related to illegal gambling. The post office would object to the cost and futility of the task, while its customers would object to having their privacy violated. Nor could the postmen simply stop delivering mail to and from addresses associated with illegal gambling. Gamblers would simply change their P.O. boxes periodically and send letters without return addresses.

Attempts to ban Internet gambling face even higher hurdles. The flood of data alone prevents ISPs from discriminating between illicit gaming information and other messages. Furthermore, it's much easier to encrypt messages, change addresses, and send and receive mail anonymously on the Internet.

And e-mail has no monolithic postal service. It relies on thousands of separate and wholly private service providers, many of which stridently object to enforcing a burdensome ban. Testifying before the National Gambling

Shades of Gray

The legal status of Internet gambling is uncertain, but people keep betting.

By James Ledbetter

Despite the creeping approach of anti-cyber-gambling legislation and judicial rulings, there remains a formidable appetite in the United States for Internet wagering. No comprehensive statistics are kept on the subject, but industry analysts agree that there are at least 300 gambling sites currently in existence, through which as much as $1 billion a year flows.

The legal status of these sites within the United States is uncertain. Some companies, particularly those that are publicly held, have chosen to play it safe: They don't allow U.S. citizens to bet money on their sites. The San Diego–based company Inland Entertainment, for example, is a vital consultant to four different casino gambling sites—including the popular www.kennyrogerscasino.com and www.goodluckclub.com—but none of them lets U.S. citizens play for money. They monitor U.S. citizenship by checking one's postal code against the billing address of the credit card used to open an account.

Another "legitimate" category of Internet gambling sites revolves around noncasino gambling. Probably the best-known company in this area is YouBet.com, which has offered Internet wagering on horse races since early this year. For residents of 40 states and the District of Columbia, this is a perfectly legal transaction. Like most Internet companies, YouBet.com is not profitable, and so its future is unclear. But the company is on a pace to surpass $2 million a year in revenue. (Interestingly, Rupert Murdoch's News Corp. and John Malone's TCI this summer launched a cable channel called Television Games Network that broadcasts horse racing live. Many media observers believe that the ultimate goal of this project is in-home interactive parimutuel betting.)

Other noncasino gambling Web sites include Bingohour.com, where users buy virtual bingo cards for $1 apiece. A bingo number is announced on the site every seven seconds, and the site claims that its jackpots regularly reach as high as $100,000. There have been no major legal challenges to the site yet, but Bingohour does claim that it "discourages players from playing bingo on the Internet in any country or state where it is illegal to participate in Internet gaming."

Other sites are located abroad but allow U.S. citizens to gamble. They offer a wide array of casino games, typically including slots, blackjack, roulette, craps, and video poker. Such sites have long operated on the premise that because their servers sit in countries where gambling is legal (usually the Caribbean, but also parts of Australia and Canada), it is legal for a U.S. residents to use them.

In late July, however, a New York judge issued a decision asserting that the state's prohibition against casino gambling applies to such transactions, regardless of where the server is located. If that reasoning holds—and it's unclear what the results of any appeals will be—much of this sector of the online gaming industry will suffer.

For the individual gambler, these sites raise reliability questions: How do you know that the game you're playing isn't rigged? Most of the sites claim to have an audited guarantee that their methodology is solid, but the simple truth is that you're at their mercy. One commentator recently compared gambling with an online casino to playing poker with someone over the phone: He tells you he's got a straight, and when you ask for proof, he sends you a printout. Similarly, there's a real problem knowing whether or not you're going to receive winnings—a major barrier to Web gambling's commercial viability.

Over the course of several months, I gambled on about a dozen of these sites. Though skeptical about relying on markets alone for consumer protection—and well aware that there are scamsters out there—I became convinced over time that Internet casinos are regulating themselves pretty well, at least for the time being. The sites are not cheap to run, and given the formidable competition, they must rely on repeat business. Any site that leaves its users with feelings of unreliability is not going to get customers to come back. In the long run, though, these sites are going to be either banned or regulated, most likely by state governments—much as real-world casinos already are. ◆

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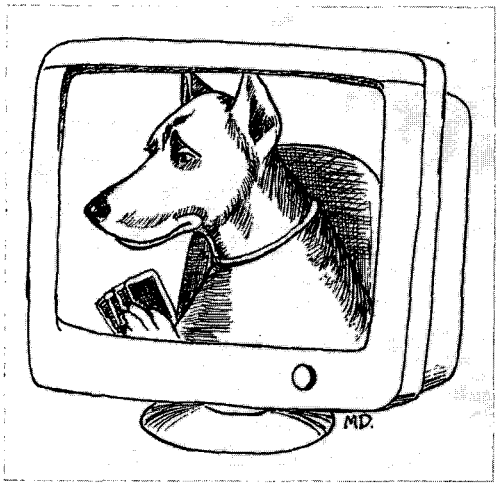
Impact Study Commission on behalf of over 250 ISPs, Ralph Simms said that the prohibitionists "imagine that problems of illegal content on the Internet could be resolved if ISPs assumed the role of traffic cop. This could not be further from the truth." Unless a gambling site rents space on an ISP's own server, Simms said, "the ISP has virtually no ability to control it."

Furthermore, American cops can do little to stop the explosion in legal gambling sites based in other countries. Such services can already set up shop in Australia, Antigua, Austria, Belgium, Costa Rica, the Dominican Republic, Finland, Germany, Grenada, Honduras, Liechtenstein, Mauritius, Vanuatu, and Venezuela, among other places. This growing number of overseas havens guarantees that, regardless of domestic policies, U.S. consumers will have access to Internet gambling.



Big-name casinos already sport some of the flashiest sites on the Web. Some, such as Caesar's Casino, run real sweepstakes online. The Hard Rock Casino has already set up space on its site for a virtual casino. Naturally, Kyl's bill includes an exemption for such online advertising and promotion.

Even Kyl admits that "we don't have jurisdiction over the people abroad who are doing it." To isolate Americans from the gaming traffic, he proposes to "pull the plug at the point of entry into the United States." But that traffic can enter the country from any number of overseas sites. To stop the trade, Kyl would have to "pull the plug" on every international Internet connection. He might as well demand a ban on horseless carriages.

Given those constraints, Kyl's bill cannot work as intended. It would, however, sorely compromise the cost, efficiency, and security of Internet communications; it would bring legal trouble to several otherwise innocent gamblers; and it would mock the rule of law.

Fortunately, no full ban on Net gambling would likely survive, especially after cooler heads in the nation's revenue departments recognize the prohibited pastime as a new breed of cash cow. Prohibition, after all, merely ensures that bettors will ship their money to gambling sites based abroad; state governors and legislatures in the United States will soon demand a share of that bounty. The same political forces that have led to the widespread legalization of lottery, casino, and riverboat gaming will thus eventually embrace online gambling too. We can get there quickly and easily or slowly and painfully, but get there we almost certainly will.

By the same token, some in the existing gaming world do not fear competition from the Net as much as they want to take it on. The industry has thus taken the somewhat awkward position of demanding that Internet competitors share its regulatory burdens. "We cannot support it without tough regulation," American Gaming Association President Frank Fahrenkopf told the *Las Vegas Review-Journal* last year. Fahrenkopf and his allies prefer not to dwell on whether Internet gambling poses a competitive threat, nor do they publicly demand that it share their shackles simply to keep it from speeding ahead. They instead argue that the absence of regulation could lead to a scandal tainting the entire industry. It seems far more likely, however, that an Internet scandal would reaffirm the distinction between honorable old-timers and naughty onliners.

In all likelihood, the domestically licensed gambling industry simply wants to slow down its Internet competitors until it can join the race. Big-name casinos already sport some of the flashiest sites on the Web. Some, such as Caesar's Casino, run real sweepstakes online. The Hard Rock Casino has already set up space on its site for a virtual casino. Naturally, Kyl's bill includes an exemption for such online advertising and promotion. If and when U.S. lawmakers finally legalize Internet gambling, the incumbent industry will stand ready to cash in.

And so will the rest of us. Despite what you've been told about the evils of the betting life, legal gambling on the Internet would cause far less harm than you probably suppose—and it would provide some remarkable benefits.

Real-world casinos, we hear, lure gamblers into windowless caverns far from the real world, with money traps at every turn and free-flowing booze. Sadly, they give customers places to socialize, creating little communities that console losers and—for a price—minister to the

lonely. True or not, such criticisms certainly do not apply to Internet gambling, which must vie with slamming doors, barking dogs, and other household distractions. Online gamblers have to buy their own drinks, too, and console themselves when they lose.

Net gambling doesn't offer just a more wholesome environment than its land-based competitors. It offers its weak-willed customers more help. How many casinos and lottery machines host "Gamblers Anonymous" banners? Many Web sites provide the functional equivalent: a link to Gamblers Anonymous. The Interactive Gaming Council, the industry's self-governing body, has promulgated a code of conduct that goes even further. Its more than 50 members must "implement adequate procedures to identify and curtail compulsive gambling"—something their software-based systems make relatively easy to do. Real-world gambling services, in contrast, would find it hard to detect and prevent excessive gambling even if they wanted to.

What about "the children"? Here, too, Web sites have an advantage over their offline counterparts. The former can automatically check the identity and age of every player who walks through the virtual door. The latter rely, at best, on hunches about high heels and facial hair. State lotteries, which sell tickets through machines, do even less to guard against underage gambling. Prohibitionists thus err in claiming that Internet gambling presents a new and dire risk to the young. At most, it will marginally increase the chances that some kids will gamble—kids with unsupervised and unfiltered Internet connections, who have not been raised to steer clear of adult-only activities, and who have ready access to credit cards.

Against this, weigh the many benefits Internet gambling offers. For one, it will drive development of the Net's infrastructure. Just as real-world casinos invest heavily in cutting-edge architecture, online gaming services will strive to offer the zippiest graphics and most sophisticated user interfaces. That competition will, as a side benefit, generate broader bandwidth and better software for all sorts of Internet applications, from e-mail to movies on demand.

It will also bring benefits to the gamblers themselves, who deserve the same advantages enjoyed by consumers of other entertainment services—including the fruits of a competitive marketplace. By giving customers cheap and easy access to a variety of gaming opportunities, the Internet can bring competition to an industry that has too long enjoyed the shelter of highly restrictive licensing practices. Freeing up the gambling market will help make payoffs more generous—and more honest.

Internet gaming services have an acute regard for trustworthiness. They lack the usual signs of respectability, such as big buildings and established reputations, and they cannot count on legal monopolies to rope in customers. Graeme Levin, founder of the popular gambling.com index of Internet gambling sites, explained the situation to James Rutherford, one of the many researchers who have studied the Net gaming phenomenon. "This is as close as I believe mankind has come to a free market," Levin said, "and sanctions follow where dishonest behavior is detected and publicized." Sue Schneider, chair of the Internet Gaming Council, agreed: "If you don't like the way you're treated at The Mirage, what can you do? Shout about it in the street? But with the Net, it wouldn't take long for the news groups to be abuzz."

Gamblers also deserve the same legal protections that other consumers enjoy. Prohibition will not cut off access to Internet gaming. It will, however, cut off access to courts. From time to time, Internet gamblers—like other consumers—will suffer fraud, breach of contract, and other legal wrongs. Prohibition merely assures that Internet gamblers will have no recourse to legal remedies.

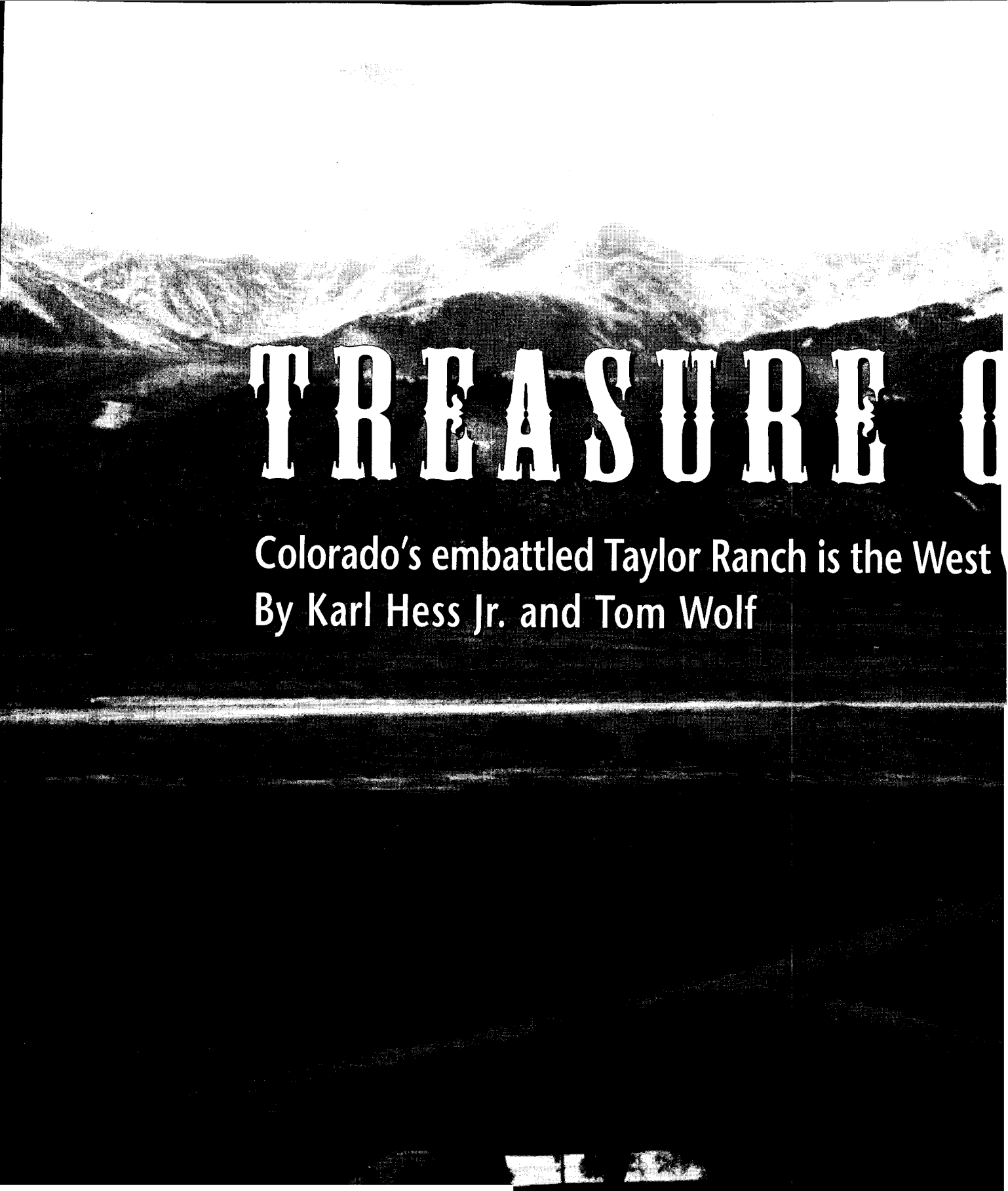
Finally, the right to peaceably dispose of one's property surely includes the right to trade, throw, or gamble it away. The Founding Fathers understood this. As Thomas Jefferson drafted the Declaration of Independence by day, he relaxed in the evening by betting on backgammon, cards, and bingo. Benjamin Franklin—using his era's most advanced technology—printed a good portion of the colonies' playing cards. George Washington regularly bet on horses, gambled in card games, and bought lottery tickets. He also managed public lotteries, as did Franklin and John Hancock. Apparently, some notable Founders regarded gambling as part of their inalienable right to the pursuit of happiness.

Over a century ago (in Internet years), *.com* originated as shorthand for *commercial.* To its business users, the suffix retains that meaning. To the many clubs, hobbyists, and individuals who have adopted it, it has come to mean *communication.* To politicians and the gambling businesses they run and license, it stands for *competition.*

Internet competition has hit old-fashioned offline businesses first and hardest—especially those, like gambling, that have long profited under the shelter of highly restrictive licenses. But as the political storm over gambling demonstrates, Internet competition poses an even greater threat to government monopolies.

At home, in private, with the click of a mouse, citizens and consumers can now escape the grip of merely local legislation. They will shrug off domestic prohibition on Internet gambling and take their business to overseas sites with more respect for their rights. Sooner or later, incumbent gaming services and their political patrons will wake up to these gales of change. They will see their futile efforts to ban online gaming collapse—like a house of cards. ◆

Tom W. Bell (www.tomwbell.com) is an assistant professor at Chapman University Law School and an adjunct scholar at the Cato Institute.



TREASURE O

Colorado's embattled Taylor Ranch is the West

By Karl Hess Jr. and Tom Wolf

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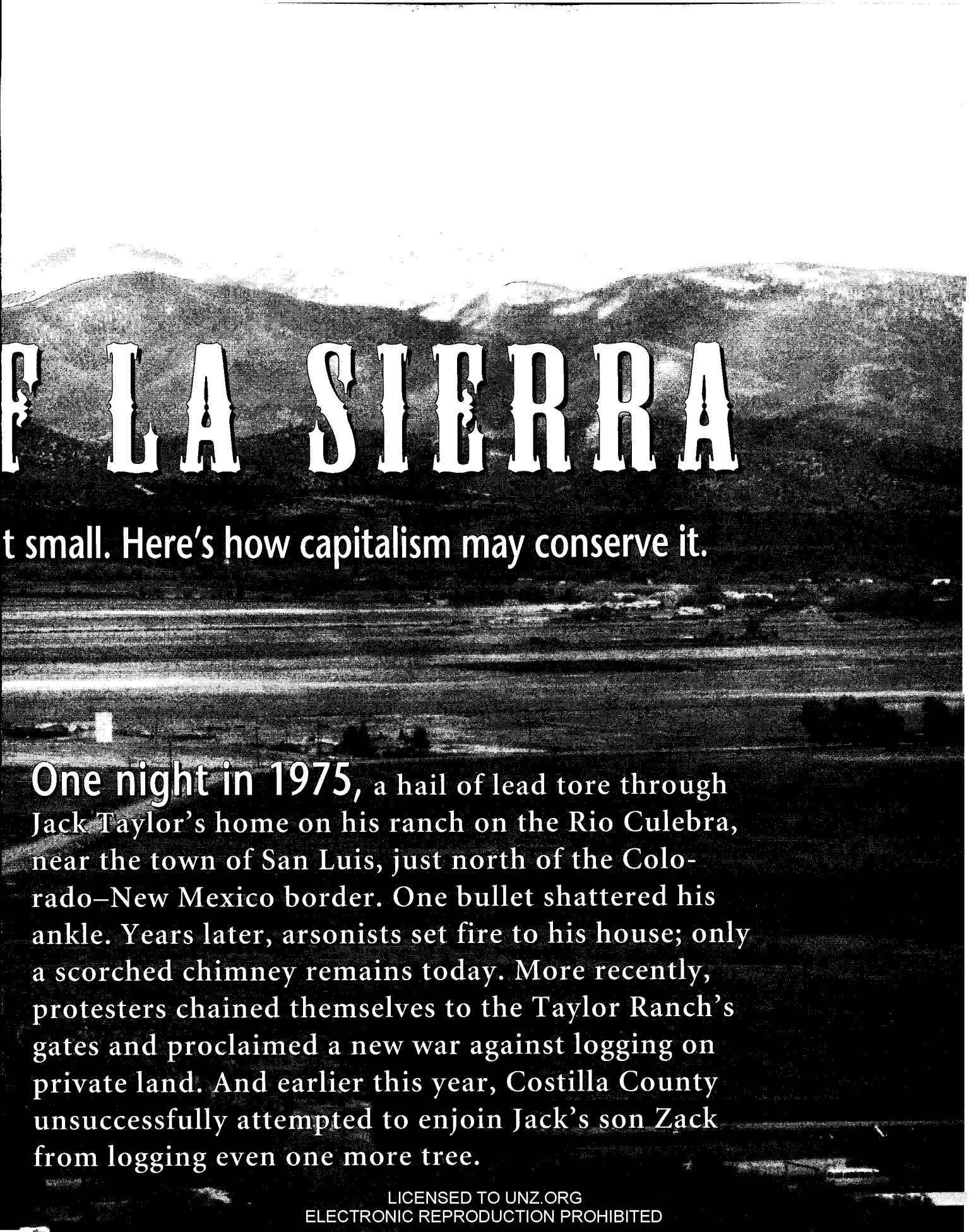

F LA SIERRA

t small. Here's how capitalism may conserve it.

One night in 1975, a hail of lead tore through Jack Taylor's home on his ranch on the Rio Culebra, near the town of San Luis, just north of the Colorado–New Mexico border. One bullet shattered his ankle. Years later, arsonists set fire to his house; only a scorched chimney remains today. More recently, protesters chained themselves to the Taylor Ranch's gates and proclaimed a new war against logging on private land. And earlier this year, Costilla County unsuccessfully attempted to enjoin Jack's son Zack from logging even one more tree.

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Scorched Earth: Arsonists burned down Jack Taylor's ranch house in May 1993. The 77,500-acre spread in Colorado has been called "the hottest environmental dispute in the Rockies."

For a generation, the Taylor Ranch has been embroiled in what *The New York Times* calls "the hottest environmental dispute in the Rockies." It is a war for the ranch's resources, a battle between outsiders from North Carolina and a long-established Hispanic community. The stakes are high: herds of elk and bighorn sheep, millions of board-feet of spruce and fir, and enough water to irrigate hundreds of square miles.

This isn't the only struggle over natural resources in the West. But the Taylor Ranch is different: It's privately owned. While nearby federal lands become the battlegrounds of intense wars over a shrinking resource pie, the Taylors' innovative ranch is trying to use property rights to make the resource pie bigger. If it succeeds, its owners will be wealthier, its wildlife will be enriched, and its San Luis neighbors will enjoy a windfall in forage, wood, elk, and water.

Taylor Ranch is the West writ small. It is a story about a beautiful landscape: 77,500 acres of rampart-like alpine peaks, fields awash in a rainbow of flowered colors, fingers of spruce-fir forests inching into slopes of yellow and orange quaking aspen, and a lower fringe dressed in pine and sagebrush. It's a tale made for re-thinking the role of property in conservation, set in a Lockean landscape where rights are up for grabs. It turns on a partial truth that Calvin Trillin stumbled on in an unfriendly *New Yorker* piece he wrote about Taylor in 1976: A man sometimes owns only the land his neighbors acknowledge he owns.

The story stretches back to 1843. Before then, the San Luis Valley was home only to Indian tribes that constantly fought among themselves. The valley was then part of Mexico, and this continual conflict suited Mexican interests: It created a buffer zone between that country and the region's other imperial aspirants. But in the 1840s, the Texans were getting belligerent, and the Mexicans were getting nervous. To protect its northern fringe, Mexico encouraged settlers to move from its northernmost outpost—today's Taos, New Mexico—into the upper reaches of the vast valley.

Charles Beaubien was a Frenchman and former fur trapper who became a Mexican citizen and, in 1843, landlord of the Sangre de Cristo Land Grant, over a million acres of unsurveyed land. The grant had a proviso: Mexican law required it to be settled

PHOTOS: CHRISTINA K. NEALSON

within two years. With Beaubien's blessing, a few desperate pioneers started the fortified town of San Luis de Culebra—and quickly abandoned it in the face of Indian attacks. The grant thus remained unoccupied, casting the first of many clouds on its title.

War reversed Beaubien's fortunes. The United States annexed Texas in 1845 and declared war on Mexico in 1846. In 1848, Mexico accepted the lower Rio Grande as its boundary. The United States took over Mexico's northern provinces; in return, Mexico received $15 million and was relieved of all claims against it by American citizens. The United States also agreed to honor Mexican citizens' claims.

Against this background, the ever-opportunistic Beaubien became an American citizen. With the U.S. Army available to maintain order, he reestablished San Luis in 1851; with Fort Massachusetts at the grant's northern end, the settlement became permanent. Overnight, a market appeared for San Luis' farmers and hunters, the fort got the food it needed to survive, and a viable village was born. Hungry for a piece of the new market, each Hispanic family in San Luis obtained title from Beaubien to a small tract of irrigable land along the Rio Culebra. As part of the deal, they assumed they had the customary communal right to graze their herds, hunt, and cut wood in the *ejido*, the nearby hills and mountains of the Rio Culebra watershed—an area that their descendants would argue included the future Taylor Ranch.

In 1861, President Lincoln appointed William Gilpin as Colorado's first territorial governor. Gilpin bought Beaubien's widow's share of the grant, promising to honor title to the irrigated parcels given earlier to the settlers at San Luis. Throughout the Civil War, Gilpin sold chunks of the *ejido* to investors betting on a Union victory. He then split what remained of the grant at the watershed boundary of the Rio Culebra, calling the northern part (the part that lay outside the watershed) Trinchera. The southern part went by the local name La Sierra—"the mountain tract."

Gilpin tried to sell La Sierra, but met staunch resistance from San Luisans long dependent on free use of its land and resources. Buyers were reluctant to invest in land whose title was colored by community claims to its forage, water, wildlife, and wood. That title would remain clouded for the next century. Trinchera was different: It had no history of communal rights. It sold to a series of buyers, and in 1969 was purchased by Malcolm Forbes.

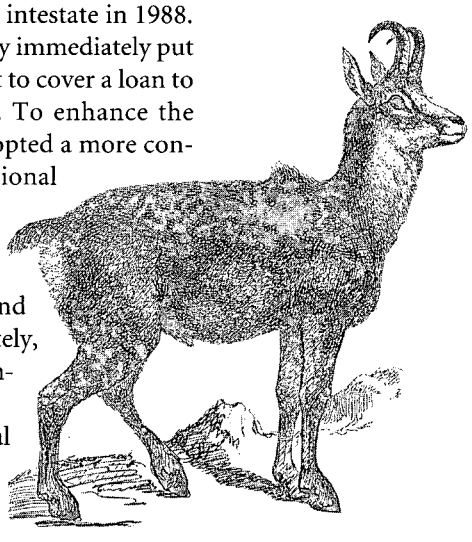
By that time, Jack Taylor—former Golden Gloves champion, WWII fighter pilot, and self-taught real estate entrepreneur—had come to Colorado. Accustomed to seeking valuable land with clouded titles, Taylor set his sights on La Sierra's timber and hunting potential. A group of Denver businessmen sold it to him in 1960 for $500,000, or about $7 an acre. But there was a catch. The deed specified that the lands of La Sierra were "also subject to claims of the local people by prescription or otherwise to rights to pasturage, wood, and lumber and so-called settlement rights in, to, and upon said land."

The common-use rights laid out in the deed were remnants of Spanish and Mexican law, largely at odds with Anglo-Saxon traditions. More important, they were at odds with Jack Taylor's plans for the land. He went to federal court, where in 1965 he won clear title to the place he renamed the Taylor Ranch. But the controversy was just beginning. The civil rights movement had arrived, and cries of *Brown Power!* echoed through the Southwest. Across the region, Hispanics were laying claim to land they felt was theirs. In 1981, a San Luis organization, the Land Rights Council, sued to regain what it regarded as San Luisans' traditional rights to La Sierra. The lawsuit, *Rael v. Taylor*, sought the outright cession of the ranch to the plaintiffs, who claimed to be heirs of the settlers of 1851.

When Jack Taylor first arrived, he fenced his property, barricaded the roads, armed himself and his employees, and beat trespassers and arsonists before hauling them into the Costilla County court. There he found himself booked on assault and kidnapping charges.

Taylor's legal success was not matched by any talent for public relations. When he first arrived, he fenced his property, barricaded the roads, armed himself and his employees, and beat trespassers and arsonists before hauling them into the Costilla County court. There he found himself booked on assault and kidnapping charges. He was convicted of minor assault and fined; the men he wanted charged went free. After his brush with assassination in 1975, he rarely returned to his ranch, where significant timber harvest and private big-game hunting took place, along with chronic poaching and trespass. He died intestate in 1988.

His son and executor Zachary immediately put the ranch on the market, in part to cover a loan to pay the crushing estate taxes. To enhance the ranch's marketability, Zack adopted a more conciliatory attitude toward traditional local uses of the land, leasing it for local grazing and eventually opening it to free community fishing, hunting, picnicking, and firewood collection. Unfortunately, the poaching and trespassing continued.



Even more damaging, his legal bills mounted, as *Rael v. Taylor* seesawed between state and

federal courts. The plaintiffs attracted pro bono lawyers out of Denver, while the ACLU, the International Center for Human Rights Litigation, and a score of others filed amicus briefs, hoping to strike a blow for insurgent Hispanics and against resurgent capitalists.

Some of Taylor's fiercest opponents wear baseball caps that proclaim, "Forbes: Capitalist Tool." Malcolm Forbes' way of dealing with community problems was to hire locals at top wages and integrate them into the operation of an increasingly successful trophy-hunting ranch.

While Taylor duked it out in court in the 1970s and '80s, his neighbor Forbes found a novel way to harness property rights to conservation and improve community relations in the process. You can still find old-timers in Costilla County who speak fondly of Forbes; some of Taylor's fiercest opponents wear baseball caps that proclaim, "Forbes: Capitalist Tool." Forbes' way of dealing with community problems was to hire locals at top wages and integrate them into the operation of an increasingly successful trophy-hunting ranch. That, in turn, was built on Colorado's Ranching for Wildlife program, an innovation established by Forbes and his ranch managers—the remarkable father-son team of Errol and Ty Ryland—in 1986.

Until that year, the 150,000-acre Trinchera Ranch was in decline. Cattle weren't paying the bills; the only realistic option, it seemed, was to subdivide the land into ranchettes. Nothing could match the glitter and gold of real estate sales—nothing, that is, until the Rylands gave their boss a money-making idea. Already committed to phase one of Trinchera's subdivision, Forbes put a proposition before Colorado's game commission: He would stop all subdivision on Trinchera for his fair share of the licenses the state issued for hunting free-ranging elk. The game commission said yes, but with one condition: Forbes would have to give public hunters rights of access to his private lands during the general hunting season.

In a state where the government had always owned the wildlife and where game ranching for private purposes had been strictly forbidden, the agreement was revolutionary. The plan, soon adopted by more than 30 of Colorado's largest ranches, created a contingent private property right in trophy big-game licenses. Participating landowners were given (with their input) a biologically sustainable number of big game hunting licenses. In exchange, they managed ranchlands for wildlife, not just livestock, and shared a stick out of their bundle of property rights with the hunting public.

Ranching for Wildlife is what keeps Trinchera intact today, just as it keeps intact similar ranches. It also gives landowners an incentive for good stewardship: The number of big game licenses landowners receive is commensurate with the number of acres and the ecological quality of their land.

The price is opening private land to limited hunting by the general public during the regular hunting season. In the case of elk, the state conducts a public lottery for 10 percent of the bull licenses, with special breaks for local hunters in certain areas. For the price of a $35 hunting license, ordinary people get a shot at the same trophy bulls that ranch clients are paying up to 250 times more to shoot.

Nonetheless, the private licenses *are valuable*. Prior to Ranching for Wildlife, private ranches hosted hunts, but not for the big dollars they now earn. Before, they could charge prospective hunters fees to hunt on private land, but they couldn't provide them with hunting seasons separate from that of the general public, extended hunting seasons to suit their schedules, or hunts at more optimal times when bagging a trophy animal might be more likely. Also, landowners didn't control the number and allocation of the licenses that would authorize hunters to hunt their lands. This weakened their bargaining position. All that made it too risky and unprofitable for landowners to develop recreational amenities like those at Trinchera, which commands about $8,000 per elk hunt and $50,000 per bighorn sheep hunt.

Under the new system, elk, cougars, bears, pronghorn, and bighorn sheep are no longer just pests that prey on cattle or eat the grass cows need. They are assets, earning landowners double or triple the dollar return on cattle. This has made wildlands, not subdivisions, the most attractive proposition in many parts of Colorado.

Indeed, Ranching for Wildlife has given ranchers incentives to reintroduce wild species to their lands. Before the program, there were no bighorn sheep in the Sangre de Cristos. Under the policy umbrella of Ranching for Wildlife, Forbes was able to reintroduce the bighorn, steward their health and numbers, and eventually receive the only authorized licenses for bighorn hunting in that area. (This meant that landowners who had not invested in the sheep's recovery could not ride free on Forbes' success.)

Since 1986, Ranching for Wildlife has spread throughout Colorado, in large part because both hunters and regulators realize its value in keeping wildlife habitat intact. It came to the Taylor Ranch in the early 1990s, bringing a financial boon for the Taylors, a conservation boost for wildlife, and a chance for local hunters to attain a world class hunt for the price of a dinner and a movie. Ranching for Wildlife not only improved environmental conditions on the Taylor Ranch, it helped stop poaching. Locals, whose poaching activities had, according to Colorado's Division of Wildlife, seriously reduced the elk herd in the 1980s, now had controlled

but legal access to high-valued elk. For the first time, the ranch's wildlife was paying its own way, a key point for the estate tax–strapped Taylor family.

While Ranching for Wildlife was establishing itself on the Taylor Ranch, endangered species lawsuits virtually shut down logging on western public lands, driving timber prices from a low of $40 per thousand board-feet in 1990 to more than $200 in 1994. Overnight, the ranch tripled in value—a blessing that was tempered by tripled tax obligations and the ever-escalating litigation costs of *Rael v. Taylor.* Federal and state agencies made a series of buyout proposals, none of which took the change in the land's value into account and all of which were rejected by the Taylor family.

Faced with dead deals and mounting debt, Zack Taylor began in 1996 to cut timber he had sold a few years earlier at top market prices. Incensed by Taylor's brazen defiance of the community's claims to the timber of La Sierra, the Land Rights Council ratcheted up its legal assault. The more it sued, the more timber Taylor had to cut to pay his legal bills; the more he cut, the louder grew the screams that he was raping the land.

In an ill-fated move, the Land Rights Council sought support from the fringe of the Anglo environmentalist movement. Soon, members of the Boulder-based Ancient Forest Rescue were chaining themselves to the Taylor Ranch gates, claiming that "the clearcutting of pristine old-growth forests" was destroying a unique and valuable culture, damaging the Rio Culebra watershed, and threatening an endangered species. None of these claims turned out to be true, but anyone who challenged them was branded as anti-environment and racist to boot.

In October 1997, Federal Judge Gaspar Perricone heard the latest version of *Rael v. Taylor* in San Luis. He denied all class action claims and ordered yet another trial to test the individual claims of a handful of the remaining heirs of 1851. His subsequent decision not only denied all claims to the ranch but reversed his 1997 decision to consider individual claims. Except for a lingering and desperate appeal by the Land Rights Council, *Rael v. Taylor* was over at last.

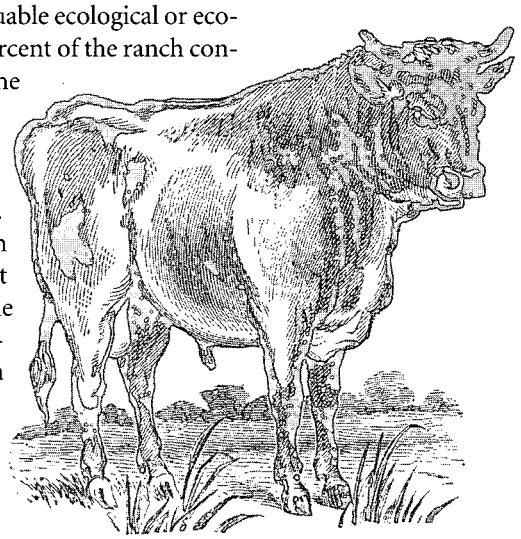
What is not over is the saga of the Taylor Ranch, and the promising future it could offer the people of San Luis and the wildlife of La Sierra.

For much of La Sierra's recent history, the high elevation spruce-fir forests that ring Culebra Peak have been the grandest prize, and the greatest bone of contention, among the parties warring over title to the mountain tract. Jack Taylor clearcut sizable chunks of the ranch—up to 500 acres in a single cut—in the 1970s. Evidence of those cuts persists, and the likelihood of at least some damage to species and watershed is almost certain. Zack Taylor is logging the ranch today, albeit with a more benign strategy of select cuts that leaves the spruce-fir forests visually and ecologically intact and the watershed relatively unaffected. For his opponents, this amounts to rape and plunder. They point to Culebra Peak and bemoan the disappearance of presumed pristine and ancient stands of spruce and fir.

But La Sierra's forests are not virgin and they are not being plundered. Most of the Culebra watershed burned to the ground in the late 1800s. Both before and after those conflagrations, the people of San Luis cut and hauled away a generous share of La Sierra's timber, just as Jack Taylor felled his abundant share in the 1970s. Moreover, the current timber practices on the Taylor Ranch meet the standard of best-management practices, as the Colorado State Forest Service has testified. The Culebra watershed is intact, the Rio Culebra runs clean and cold, and the ranch's wildlife is healthy and diverse.

If Taylor is to be faulted, it is for the rate of his cut, a rate that can only be sustained for a few years. Yet his decision to cut more now and less later is not without cause. Besides his tax burden and the high price for timber, there is the real chance that an endless stream of lawsuits and protests might rob his family of the future benefits that might accrue if he let the timber stand a few more years. That same fear led Taylor to sell the southern end of the ranch in late 1998, a move with far more negative ecological consequences than a simple skimming of La Sierra's more robust trees.

But debate on the prudence and procedures of logging, however reasoned and informed, still begs the larger point: The spruce-fir forests of La Sierra are not the ranch's most valuable ecological or economic asset. Less than 15 percent of the ranch contains commercial timber. The other 85 percent is made up of aspen woodlands, grassland, and low elevation pine and sagebrush. These habitats, not the high elevation forests, are what constitute and will sustain the long-term health of the Taylor Ranch. It is here, not on the dark and sterile evergreen forest floors, that La Sierra's wildlife resides. The future of the Taylor



Ranching for Wildlife: Taylor Ranch Manager Vic White oversees a market-based plan that seeks to reconcile property rights and communal use.

Ranch rests not in its sparse forests, however valuable they may be for the moment, but in its wild animals and the lucrative recreation they allow.

Ted Turner knows this. His Vermijo Ranch, in New Mexico, borders La Sierra on the south; he has pioneered the practice of turning wildlife and recreation into both big profits and big dividends for the environment. Malcolm Forbes knew it, and his sons know it now; Trinchera is a refuge for wilderness because hunters, and attendees at the Forbes conference center, will pay for it. Zack Taylor is just now beginning to see it, especially as the burden of lawsuits and protests recedes.

Ironically, the greatest environmental damage now occurring on the Taylor Ranch has nothing to do with cutting trees and everything to do with the one communal use of the land that has persisted over the years: cattle grazing.

Long before Jack Taylor's tenure, the tradition of open access grazing had taken its toll on the health of the Culebra watershed. William deBuys, the region's most respected environmental historian, is unequivocal on this: "The old ways, while generous to humans, were exceedingly hard on the land. Neither the *ejido* nor the cultivated [irrigated] tracts received any rest [from livestock] except when they were buried under snow...." (This legacy of devastation is never decried by Ancient Forest Rescue or the Land Rights Council, whose eyes are fixed on the trees of La Sierra.)

DOW's Ranching for Wildlife review team blames the historic condition of the ranch on intensive stock grazing through the first three-quarters of the century, a period that largely predates the arrival of the Taylor family. That grazing degraded rangelands, dried up streams, and accelerated erosion. The better part of Zack Taylor's Ranching for Wildlife contract is an agreement to restore the abused rangelands. Last year Taylor eased back on that obligation, allowing Hispanic farmers hurt by a drought to graze more livestock than they should have. Because of this overgrazing—not logging—DOW barred Taylor from Ranching for Wildlife, effective this fall. He can reenter the program when he takes action to restore and protect his rangelands, so vital for elk in the winter, from the impact of cattle.

Taylor's suspension from Ranching for Wildlife is a blow to conservation on La Sierra and a blow to the San Luisans who benefit from legal hunting on the ranch. But it is also one last chance to end the property rights conflict that has divided La Sierra between private and communal interests for 50 years. A bold new plan could transform the Taylor Ranch into a model of private conservation across the West and, at the same time, give substance and form to the San Luisans' moral, if not legal, claims to a share of the forage, water, wood, and wildlife resources of La Sierra.

In March 1999, conservationists, scientists, and landowners from southern Africa and the western United States met at Forbes' ranch to discuss private responsibility for private land stewardship. The gathering was hosted by the Thoreau Institute and the Sand County Foundation; its attendees included Zack Taylor and the authors of this essay.

The chemistry was unique. Across from us sat farmers from southern Zimbabwe who had joined with their neighbors to set up the Bubiana Conservancy, a wildlife cooperative dedicated to the private management of animals ranging from rhino to elephant to cape buffalo. Taylor, a neophyte to

wildlife conservation, listened to them intently. These farmers were committed to conservation; against all obstacles, including a Marxist state hungrily eyeing their lands, they were fighting for private wilderness and private wildlife. Taylor, too, faced expropriation, but the conservation daring of these Zimbabwean environmentalists was something new, unsettling, yet ultimately alluring.

After that meeting, Taylor was more willing to consider a plan—first suggested months earlier by the authors of this essay—that would reconcile private property rights with historic communal uses, and would do so through the transforming power of the marketplace. Similar to the African initiatives, the plan would turn the Taylor Ranch into a resource bank for both its owners and its neighbors. The bank would provide a continuous flow of resource benefits to San Luisans. Those benefits would then contribute to the profit-making wildlife and timber ventures of the Taylor family.

The Ranching for Wildlife program would be expanded, on a voluntary basis, to embrace the valley bottom farms that border the Taylor Ranch and that contain the elk winter range that the ranch now lacks. Currently, those farms grow grass to feed cattle in winter. Yet the value of those cattle when fed on winter hay is only a fraction of the economic value of elk when raised on the same forage, uncut and unbaled. By adding small parcels of former haylands to La Sierra's expansive summer upland ranges, the total number of available elk licenses in Taylor's Ranching for Wildlife contract would increase significantly. The Taylor family would earn more revenue, the small farms would more than double their profits from their valley meadows, and enough cash would be left over to buy local hay to sustain their displaced cattle for the winter.

During the summer, cattle grazing would continue on the Taylor Ranch, but with two big differences. First, there would no longer be a grazing fee. Second, in return for the free grass, community stockmen would assume responsibility for 1) protecting sensitive areas, such as wetlands, from the adverse effects of cattle; 2) stopping the cattle from trespassing and overgrazing; and 3) herding and holding their livestock in key areas where the stock's activities would help wildlife. (Local Hispanic farmers are already organizing, at their own initiative, a stockmen's association to regulate grazing on La Sierra and to help Taylor meet his obligations to Ranching for Wildlife.)

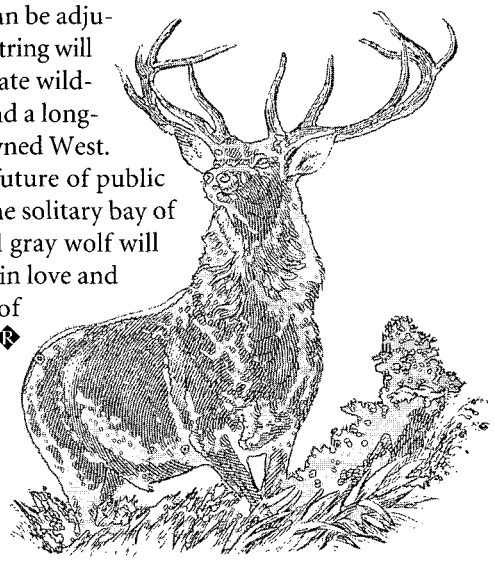
Community rights would also be hitched to the fate of the ranch's timber and water resources. First, the resource bank would keep sustainable logging alive on the Taylor Ranch, benefiting both the Taylors and the villagers. The bank would give logging rights to San Luisans in small-diameter spruce-fir thinnings and 5- to 15-acre aspen patch cuts. The harvest would then be processed locally to produce lucrative value-added products, such as molding. The thinned forests would accelerate the growth of commercial timber while opening the forest floor to sunlight and more plants for wildlife. Small aspen clearcuts would rejuvenate decadent and dying aspen stands while creating ideal summer grasslands for elk. Everyone would gain: The Taylor Ranch and surrounding farmlands would have more elk to hunt; the Taylor family could harvest more timber, sooner; and the local community could build a thriving industry.

Second, and possibly most important, the community's thinning and patch-cutting could be designed to retain more snow in the forest and to optimize how much of it melts into the watershed in the summer. The irrigation waters below the ranch could then run cleaner and longer, benefiting local farmers. Further up the watershed, proper timber management would spur on the already growing population of beavers, the keystone species for sustaining the highly productive wetlands so essential to a broad array of plant and animal life.

It's too early to tell if the resource bank will work, or even if all the players in La Sierra's future will embrace its benefits, its responsibilities, and its challenges to conventional thinking. But this much is certain. The mountain land stretching from Turner's Vermijo Ranch to the Forbes property and beyond is private. And each of those properties is an island of conservation hope in a grim sea of failed federal management.

But this much is certain. The mountain land stretching from Ted Turner's Vermijo Ranch to the Forbes property and beyond is private. And each of those properties is an island of conservation hope in a grim sea of failed federal management.

The weak link in the string of private pearls is the Taylor Ranch, mostly by dint of its contested title. But if those rights can be adjudicated by informal means, the string will be complete and secure. A private wildland of vast proportions will find a long-sought niche in the federally owned West. And as Americans debate the future of public lands and federal wilderness, the solitary bay of the first privately reintroduced gray wolf will echo across a landscape carved in love and profit by the capitalist tools of Turner, Taylor, and Forbes. ◆



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TRUTH, TERROR, AND DAVID TRIMBLE

Is the Nobel Peace Prize winner complicit in murder? What the Brits can teach Americans about libel law.

By Michael McMenamin

You have just won the Nobel Peace Prize.

You are a very important person. But before your ego can deflate and you can start spending the prize money, some journalist writes a book accusing you of complicity in the government-sanctioned murder of innocent people. What to do?

If you're Henry Kissinger, you shrug your shoulders, denounce the accusations as absurd, and go about your business of preserving Soviet-American hegemony until Ronald Reagan can become president.

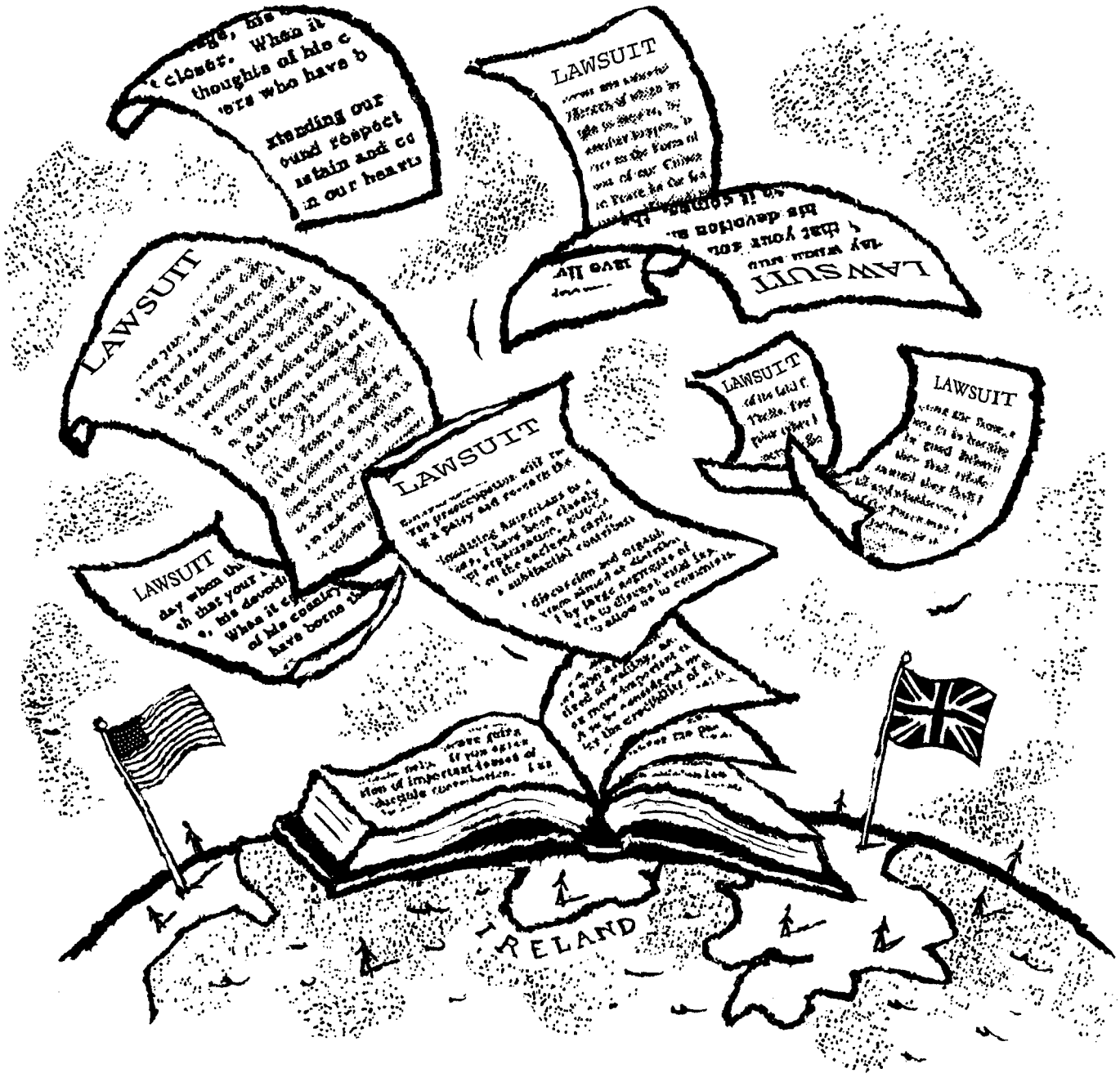
If you're David Trimble, the first minister of the yet-to-be-formed coalition government in Northern Ireland, the head of its largest Protestant party, and the co-recipient of the 1998 Nobel Peace Prize, you adjust your orange sash, denounce the charges as absurd, and—because you still live in the United Kingdom—sue or threaten to sue everyone in sight for libel, including the publisher, the journalist, and any U.S.-based online bookseller who dares offer the book for sale in the U.K.

Does this mean David Trimble is more thin-skinned than Henry Kissinger? Not exactly. It simply means that, in the name of the First Amendment, the libel regime in the U.S. actively discourages public figures from seeking legal redress against the media when they claim they are defamed. If you don't like what the media say, the Supreme Court says your status as a public figure will afford you a forum to issue your denials. But in the U.K, if you're a defamed public figure and you don't sue, you're perceived as a cowardly wimp or guilty as charged. Probably both.

Although there's only one book out there saying bad things about David Trimble, he's going to have to stand in line at the courthouse to sue. The 1998 book, *The Committee: Political Assassination in Northern Ireland*, and a 1991 British TV documentary also called *The Committee* have been the subject of no fewer than eight separate libel lawsuits, seven in the U.K. and one in the U.S., where it is a bestseller with more than 60,000 copies sold. (See "Tracking the Suits," page 42.)

The book's author is British journalist Sean McPhilemy, who was also the executive producer of the documentary that started it all when it was broadcast on Britain's Channel 4. The central thesis of the book and the program is that, starting in 1989, a committee consisting of high-ranking members of the Protestant establishment in Northern Ireland, including lawyers, businessmen, politicians, and ministers, used the services of Protestant paramilitaries in a terror campaign against Catholic targets in

DANIEL BAXTER



Northern Ireland. Victims were located and identified by members of the Royal Ulster Constabulary (London's Ulster police force), who, says McPhilemy, at best looked the other way or, at worst, actively assisted the hitmen. Trimble is accused in the book of being an associate of The Committee, rather than a member, and of providing political cover for its activities.

The implications of both the book and the litigation surrounding it are significant.

Of immediate importance is its impact on the Northern Ireland peace process, which, as this is written, is a shambles. That's either because 1) Trimble has refused to allow the formation of a new Northern Ireland government that includes representatives of Sinn Fein (the political wing of the Irish Republican Army), as envisioned by last year's Good Friday Agreement, or because 2) the IRA has refused to commence the decommissioning of its arms, also part of the agreement. Take your pick.

The litigation will also provide a vivid contrast between the British and American libel regimes and how they handle what is essentially the same case. While libel defense lawyers in both countries prefer the American system with its many First Amendment defenses, the much-maligned British system may well go much further than the American in uncovering the truth about the sensational allegations. Finally, because U.S.-based online booksellers have been sued in the United Kingdom, the

litigation may determine whether the U.K. libel regime's age-old custom of effectively banning a book by threatening a libel action will survive in an age of e-commerce.

By McPhilemy's account, the "Ulster Central Coordinating Committee" was an outgrowth of Protestant reaction to what they considered a "betrayal" by Margaret Thatcher in 1985, when Britain gave the Republic of Ireland a limited role in speaking for the Catholic population of Northern Ireland. There also was a growing frustration within the Protestant establishment and the RUC itself that the hands of the security forces were being tied by politicians in London. The IRA wasn't impressed by the Thatcher initiative and continued its relentless campaign of terror against Protestants, including prominent Protestant businessmen who, by the IRA's definition, had "collaborated" with the authorities by selling them goods or services. More extreme Unionists (so called because they traditionally supported union with Britain), including a then little-known university law lecturer named David Trimble, urged Ulster's independence from Great Britain, a view shared by The Committee. For the record, all the members of The Committee who are identified in the book have denied the group's existence.

In his book, McPhilemy identifies 18 victims whose murders were allegedly sanctioned and organized by The Committee between February 1989 and September 1991. All of these murders are officially "unsolved." This terrorist campaign, whether or not directed by The Committee and assisted by the RUC, continued to be chillingly effective. In 1992, the hit squads killed nearly twice as many Catholics as the IRA did Protestants. A serious IRA peace initiative followed in 1993.

McPhilemy's largely circumstantial evidence regarding Trimble is based on Trimble's alleged close association with many persons identified as members of The Committee, and on Trimble's efforts, in response to the documentary (which identified no Committee members by name), to discredit it and McPhilemy. Trimble attacked the documentary in interviews and, with full legislative immunity, on the floor of Parliament. McPhilemy interviewed his primary confidential source, James Sands, extensively on several occasions, including a lengthy videotaped interview in which he claimed to have sat on The Committee itself. According to McPhilemy and his investigators, the details of his story and his background checked out. He was who he said he was—a close political associate of many of the people he identified as being on The Committee.

As for the case against McPhilemy, it rests on the fact that the Royal Ulster Constabulary was able to identify James Sands as the source and, after substantial interrogation, to persuade him in 1992 to recant his Channel 4 interview. Unfortunately for the RUC, they didn't have access to the complete transcripts of Sands'

Tracking the Suits

Here's a scorecard of the various libel suits involving the 1991 TV documentary *The Committee* or Sean McPhilemy's 1998 book of the same title:

■ Alleged Committee member and prominent Belfast solicitor Richard Monteith filed a criminal libel action against Executive Producer Sean McPhilemy for statements he allegedly made about Monteith in a BBC interview about the program in August 1992. The case was dismissed in March 1993.

■ Richard Monteith filed a contemporaneous libel suit against Channel 4. The case was settled out of court. Settlement terms are confidential, but Channel 4 presumably paid money to Monteith.

■ Monteith filed a civil libel suit against McPhilemy in May 1993. The suit was voluntarily dismissed by Monteith.

■ Monteith filed a libel action against *The Sunday Times* in May 1993 for printing McPhilemy's comments about him. The suit was settled, with *The Sunday Times* paying £50,000 to Monteith.

■ McPhilemy sued *The Sunday Express* in 1994 for accusing him of deceiving Channel 4 about the threats to his life in 1991, and of filing a false affidavit on the subject. The suit was settled out of court with apologies and £132,000 in damages to McPhilemy.

■ McPhilemy filed a libel action in 1996 against *The Sunday Times* for accusing McPhilemy of perpetrating a "hoax" in the broadcast. The case is scheduled for trial in January 2000.

■ In October 1998, David and Albert Prentice, two prominent Ulster businessmen and alleged members of The Committee, filed a libel suit in Washington, D.C., against McPhilemy, his production company, and the publisher of McPhilemy's book. The case is scheduled for trial in March 2000.

■ Trevor Forbes, a former head of the RUC Special Branch and an alleged member of The Committee, filed a libel suit in June 1999 against Barnes & Noble over a "sample chapter" of the book that it published on its Web site. The case is pending.

■ This year, alleged Committee associate David Trimble sued Amazon.com and its British division over the book, which prior to this suit was available to British customers at Amazon.co.uk. Amazon.co.uk subsequently withdrew the book from sale in the U.K., but it is still available to U.K. customers through Amazon.com. The case is pending.

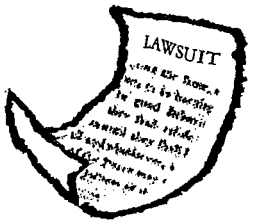
—Michael McMenamin

interview with Channel 4, whereas McPhilemy was able to obtain from a U.S. court a complete transcript of the RUC's interrogation of Sands. In his book, McPhilemy examines in careful detail both the initial Sands interview with Channel 4 and the RUC-induced retraction and easily demonstrates the credibility of the initial version.

Additionally, Sands met with McPhilemy's American and British lawyers earlier this year and signed an affidavit confirming that his original interview was true and accurate and his retraction to the RUC was induced by threats. Yet in subsequent interviews with the British press, Sands has again recanted (albeit not under oath). Moreover, McPhilemy had another anonymous source within the rogue element of the RUC who confirmed details of collaboration with anti-Republican terrorists (though not the existence of The Committee itself). McPhilemy claims to have more former RUC members as sources as a result of further research for the book. One of those has been identified in court papers as former RUC Sgt. John Weir, who claimed that an alleged Committee member, Belfast solicitor Richard Monteith, told him in December 1998 that "the book was basically accurate" and contained only "small mistakes."

McPhilemy himself was a respected investigative journalist before producing *The Committee.* But he was not political, never having done an article or program on Northern Ireland. As a former colleague wrote earlier this year in *The Financial Times,* "McPhilemy, a Catholic who is married to a Northern Ireland Protestant, had deliberately made no programmes on sectarian strife in his native province because he was pessimistic about political progress and disinclined to immerse himself in the intransigence and bigotry that prevailed on both sides of the sectarian divide."

These factors—McPhilemy's reputation as a journalist, his lack of Irish Republican sympathies, his initial reluctance to do the program at all, the two confidential sources, the patent inconsistencies in his major source's recanting, and the numerous (if anonymous) former RUC officers who supposedly confirm RUC complicity in the unsolved assassinations—have a direct bearing on the likely outcome of any libel suit brought into an American court. Taking them all into account, it is not unreasonable to conclude that McPhilemy has acted throughout with a good-faith belief in the truth of what he has broadcast and published. And if that is the legal issue in a libel case, it won't get to a jury in the United States if the person suing is a public official or public figure.



The situation is again becoming critical in Northern Ireland, and journalist Sean McPhilemy is an inconvenient presence not only to David Trimble but to British Prime Minister Tony Blair as well.

That is among the reasons that most of the libel suits were filed only in the U.K., notwithstanding that the book is widely available in the United States. In the U.K., libel plaintiffs are thought to have it easier than in the U.S. For one thing, if you sue someone for libel in the U.K., it is the defendant who must prove the truth of what he published.

Also, plaintiffs in the U.K. can do more than sue the author and publisher of the alleged libel. They can sue anyone who disseminates it, including news dealers and booksellers. All they have to do is prove that the news dealer or bookseller had knowledge of the defamatory content and continued to sell the offending publication. The knowledge requirement is usually taken care of by the plaintiff's helpful solicitor, who sends an ever-so-polite letter to the bookseller or news dealer advising him to remove the offending publication from his wares or he will have his pants sued off. This usually does the trick, given the low profit margins of most booksellers and news dealers.

On the down side, the plaintiff must pay his solicitor for the lawsuit as well as the barristers who actually try the case. Contingent fees are forbidden. And if the plaintiff loses, he must pay the attorneys' fees for the defense. So while libel plaintiffs may have it easier in the U.K., the threat of losing and paying the other side's attorneys' fees acts as a deterrent to frivolous suits.

Unfortunately, there is no such deterrent in the United States. On average, far more frivolous libel actions are filed in the U.S. than in the U.K. So plaintiffs' lawyers in the U.S. frequently take libel cases on a contingent basis. Inasmuch as America does not have a "loser pays" tradition on attorneys' fees, the Supreme Court has helpfully placed a multitude of roadblocks in front of libel plaintiffs to keep them from raiding media treasuries. Plaintiffs have the burden of proof. And not only do they have to prove that the statements about them were false; they also have to prove that the media defendants were at fault. Specifically, if you are a private figure, you must prove that the reporter was negligent in doing his job.

If you are a public figure or a public official, the bar is raised even higher. A public official must show that the statements were false and defamatory, and that the reporter deliberately lied or was so reckless in his reporting that you could conclude he didn't care whether what he reported was true or not. This is commonly referred to by libel lawyers as the *New York Times v. Sullivan* rule, after a 1964 Supreme Court decision.

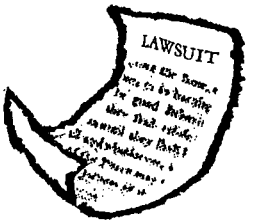
The Supreme Court has done all this in the name of the First Amendment, and the accepted dogma in the United States today is that it has been necessary to avoid a "chilling effect" on free speech. As a consequence, almost 90 percent of all U.S. libel actions are decided in favor of the media before trial on issues

other than truth. It is by no means clear, however, that the constitutional standards of *New York Times v. Sullivan* are more of a deterrent to frivolous libel actions than the United Kingdom's practice of making the loser pay the winner's attorneys' fees.

Perversely, the U.S. system that makes it so hard for public figures and public officials to recover for damage to their reputation actually gives them a free pass when very bad things are said about them. All they have to do is issue a vigorous denial, because in the United States they are not expected to sue. They can hide behind *New York Times v. Sullivan* and say they don't want to spend tens of thousands in attorneys' fees to prove that a reporter was reckless when all they want to do is clear their good names, something the U.S. libel system is not designed to do if you are a public figure or public official.

But in the U.K., given all the advantages that a libel plaintiff possesses, public officials have long been under enormous pressure to issue libel writs if they have been defamed. If a public official merely satisfies himself with an angry denial, people start wondering, repeat the libel, and think, "If you don't sue, it must be true."

So which system better serves the public interest in terms of uncovering wrongdoing by public officials? It is probably impossible to quantify, but occasionally something comes along that allows you to draw a comparison. *The Committee* is just such an occasion, and in this case the U.K. system wins hands down.



Does the David Trimble lawsuit against Amazon.com, along with policeman Trevor Forbes' lawsuit against Barnes & Noble, endanger the future of Internet book sales in Britain by U.S. booksellers? In a word, no.

None of the libel suits that arose in the U.K. in the wake of the 1991 broadcast of *The Committee* would have happened in the United States. Richard Monteith, the Belfast solicitor, filed both criminal and civil libel suits against McPhilemy even though the original documentary was careful not to describe any Committee members in any way that would allow them to be publicly identified. And even if it had, a U.S. public figure would have used the media, not the courts, to fight back. In addition to defending himself against Monteith, McPhilemy also was determined to rescue and restore his reputation as a journalist. That reputation had been battered by the media campaign against him and the program by the RUC, the Ulster establishment, and those media outlets that bought their spin. *The Sunday Express*, for example, accused him of lying to Channel 4 about threats to his life, and *The Sunday Times* accused him of perpetrating a hoax in the 1991 TV broadcast.

From the outset, McPhilemy contemplated libel suits against both papers in a way an American journalist would never have considered. It's fair to conclude that, but for the initial Monteith suits involving the documentary and the imperative to clear his own reputation, McPhilemy would not have undertaken the additional extensive research necessary to publish the book that identifies the names of The Committee members, and which resulted in the new lawsuits, including David Trimble's.

McPhilemy's suit against *The Sunday Times* is scheduled for trial in January in Britain; the only suit to be brought in a U.S. court is scheduled to come to trial here in March. While both trials will generate considerable heat, the British libel trial is the more likely to shed light on the book's essential allegations. This is because the defense in the American suit will focus on whether McPhilemy was reckless or negligent in his reporting, while *The Sunday Times* will focus its defense on the book's falsity.

McPhilemy attempted to limit the case to the *Times*' accusation that he was incompetent and careless at best, and a hoaxer and deceiver at worst. But in May, the Court of Appeal in London rejected McPhilemy's attempt. The Court of Appeal judge reasoned that *The Sunday Times* article at issue "comes close—I am inclined to say very close—to asserting that the programme's central thesis was untrue. I accept that in some circumstances a publication that the content of a programme is untrue may not be defamatory to the programme makers. But I consider that in this instance it adds to the defamatory sting to say, not only that the main content of the programme was based on obviously worthless evidence, but that it was, or probably was, untrue."

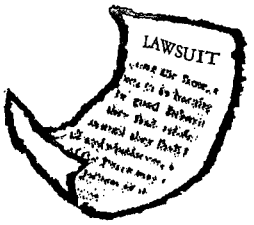
McPhilemy wanted to put himself and his journalistic methods on trial, not the truth of the central thesis of the program. *The Sunday Times*' lawyers finally figured out they might not win by an attack based on McPhilemy's incompetence or mendacity. Far better, *The Sunday Times* reasoned, to try and prove that McPhilemy's main source—James Sands—was unworthy of belief based on his erratic RUC-induced statements after the broadcast.

David and Albert Prentice aren't going to have it so easy in their U.S. trial next March. Last October, the Prentices, prominent Ulster businessmen and alleged members of The Committee, filed a libel suit in Washington, D.C., against McPhilemy, his production company, and the American publisher of *The Committee*. If they are determined by the court, as a matter of law, to be public figures, then only McPhilemy's conduct as a journalist (whether he knowingly lied or was indifferent to the truth) will be at issue, not the book's truth or falsity. Truth will be at issue if the case goes to a jury, and that won't happen unless the Prentices are private figures.

McPhilemy's American lawyer certainly believes the Prentice brothers will be found to be public figures. Recent court papers

filed by him allege, among other things, that the Prentice brothers have extensively advertised their business throughout Northern Ireland, sought publicity for their many charitable contributions, financed an anti-Republican printing company, openly cooperated with *The Sunday Times* in its McPhilemy litigation long before they had been identified as Committee members, and actively sought publicity for their lawsuit against McPhilemy. If McPhilemy can prove all this to the court's satisfaction, the Prentice brothers will be just another U.S. libel plaintiff statistic, one of the 90 percent who lose before trial on issues other than truth.

One issue arising from this tangle of cases is straightforward. Does the David Trimble lawsuit against Amazon.com, along with policeman Trevor Forbes' lawsuit against Barnes & Noble, endanger the future of Internet book sales in Britain by U.S. booksellers? In a word, no.



The British libel regime has resulted in the publication of a best-seller in the United States that accuses the first minister–designate of the new government of Northern Ireland of providing political cover for terrorists.

While it is true that U.K.-based booksellers, including Amazon's U.K. subsidiary, have removed the book from their Web sites, the major U.S. online booksellers—Amazon, Barnes & Noble, and Borders—continue to sell and ship the book to customers in the U.K. (The book's U.S. publisher, Roberts Rinehart of Colorado, no longer accepts orders for the book placed by customers in the U.K. on its Web site.) When asked why Amazon had taken the book off its U.K. Web site but still made it available on its U.S.-based Web site for sale to U.K. customers, Simon Murdoch, managing director of Amazon.co.uk and vice president of Amazon.com, explained: "From a legal point of view, it's actually quite a big distinction. The situation is, if you actually buy the book from any company in the States, as I understand, you would be actually bringing the book in yourself as an individual."

David Trimble is maintaining his suit against Amazon.com despite the fact that the book is no longer available on Amazon.co.uk. But there are two additional reasons why Amazon.com need not be worried about it. First, any libel judgment against Amazon in the U.K. will be enforced only against its assets located in the U.K. And, assuming that Amazon.co.uk is a subsidiary corporation and not simply a division of Amazon.com, English solicitors maintain that its assets cannot be used to satisfy a judgment against the U.S.-based parent. Second, there is an increasing trend among U.S. courts to refuse to enforce English libel judgments transferred to the U.S. because they are the product of a system which is contrary to the public policy of the United States.

The ultimate outcome of the U.K. suits against Amazon and Barnes & Noble, therefore, is that the U.K. libel system will not be able to impose its standards on books shipped from the United States. Equally important, English solicitors will no longer be able to effectively ban books in the U.K. simply by threatening to sue a bookseller. They can limit access, but banned books in the U.K. are a thing of the past thanks to U.S.-based online booksellers.

As to the other issues, the bottom line is that the British libel regime has resulted in the publication of a bestseller in the United States that credibly accuses the first minister–designate of the new government of Northern Ireland of providing political cover for terrorists. The U.S. libel regime is far less likely to have produced such a result.

Politically, the timing could not be worse. The situation is again becoming critical in Northern Ireland, and McPhilemy is an inconvenient presence not only to David Trimble but to British Prime Minister Tony Blair as well. Trimble's lawsuit only serves to focus more attention on himself and the accusations against him.

Tony Blair has now gone much further in Northern Ireland than Margaret Thatcher ever dreamed: Genuine power sharing with the Catholic minority is at hand; the IRA's guns are once again temporarily silent; and the Republic of Ireland has formally dropped any claim to sovereignty over Northern Ireland. Yet David Trimble, as the first minister–designate, is refusing to allow the new government to be formed because the IRA won't commence decommissioning its arms.

Trimble and the IRA are playing a dangerous game. Each has a diametrically opposed view of what the British will do if the peace process breaks down, and the cease-fire with it. Trimble trusts that Blair will again send in the British Army to restore order.

But trusting the British to do the right thing is not a policy; it's a wish. That Blair was a hawk on Kosovo is no guarantee he will be the same in Northern Ireland, especially in the face of what is widely perceived as Unionist intransigence. If the IRA breaks the cease-fire and the British don't send their army back in, Ulster will end up being led by a politician who only 10 years ago was advocating Ulster independence. And if Ulster independence comes, so probably will a new Irish civil war between north and south, much to the delight of the IRA, if not Sinn Fein, neither of which ever made the mistake of trusting the British to do the right thing for Ireland.

If David Trimble really wants to live up to the legacy of his Nobel Peace Prize, he should spend less time on his reputation and more on his country, U.K. libel law notwithstanding.

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TRIAL BY FURY

How radical legal theory from America is destroying civil liberties in Great Britain.
By Helen Searls

Something strange is happening to British justice.

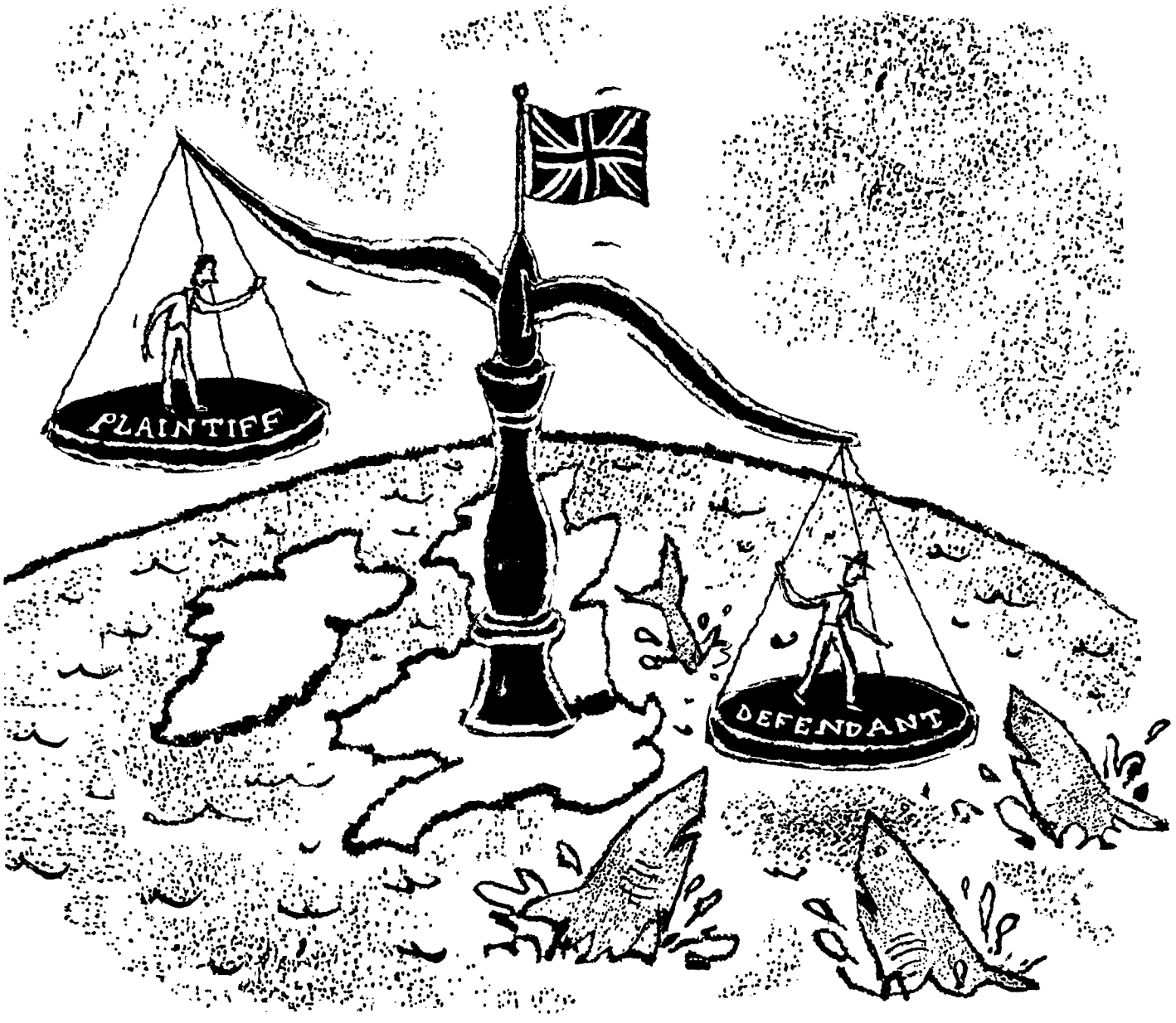
In recent months the British government has unveiled an array of measures that promise to change the legal system profoundly. This spring, British citizens learned that Jack Straw, the home secretary (the rough equivalent of the American attorney general, though with more political power), plans to abolish trial by jury for all but the most serious crimes. He is also considering lifting the rule against double jeopardy, which prevents a defendant from being tried more than once for the same crime, and is thinking of criminalizing offensive language even when it is spoken in the privacy of one's home.

Some in the British news media have treated these announcements as an aberration. Surely, they ask, these are not normal measures for a Labour government. The BBC was quick to remind audiences that the idea of abolishing trial by jury was first floated by the last Conservative home secretary, Michael Howard, three years ago in a rousing speech to his party's faithful. Maybe Straw's promises are an attempt by the new Labour government to woo elusive middle England voters—traditional middle-class Tory voters—from rural and suburban areas? But with the Tories still trailing abysmally in the polls, it is hard to see what Jack Straw has to fear from middle England.

To make sense of what is happening to the British legal system, it is necessary to look beyond middle England and peer into the depths of New Labour's thinking and practice. The truth is that Jack Straw is very much in his party's mainstream when he talks about reforming fundamental aspects of British law. He has told Parliament that he expects most of these measures to be law by the end of 1999. While it is not certain that all his proposals will reach the statute books, the entire Cabinet shares Straw's enthusiasm for reform. His plans are indicative of a new approach to the law, one influenced by radical legal thinking imported from the United States. As a result, some of the key principles on which the law has stood for centuries, principles aimed at protecting individuals from trespasses by the state, are being challenged.

The impulse behind the current wave of reform comes from the findings of a high-profile inquiry into the London Metropolitan Police Force, published last spring. In 1993, a young black man named Stephen Lawrence was bru-

DANIEL BAXTER



tally murdered by racists in the streets of South East London. Although there were five prime suspects, nobody was convicted, and the case remained officially unsolved. Gradually, the belief grew that the inability to secure a conviction was due to racist attitudes within the police force.

For the next few years, Stephen Lawrence's parents demanded that somebody investigate why the police had proved to be so incompetent. But not until Labour came into power in 1997 did the authorities take their demands seriously. Jack Straw set up a full public inquiry into the affair.

Although formally independent, this inquiry had the blessing and backing of Labour from its inception. In the way that Independent Counsel Kenneth Starr was regularly linked to the GOP in the public imagination here, so the Lawrence investigation was seen by many in Britain as a political initiative by Labour. Unsurprisingly, when the investigators finally published their findings in *The Stephen Lawrence Inquiry* (www.official-documents.co.uk/document/cm42/4262/4262.htm)—commonly known as the Macpherson report, after the chair of the team, retired judge Sir William Macpherson—the government took the unusual step of agreeing to implement all 70 of its recommendations.

After months of hearing detailed evidence, Macpherson and his three-man investigative team concluded that the London police were indeed guilty of institutional racism. No inquiry had ever been so critical. The report sent a shock wave across the nation. Newspaper headlines screamed of a "police force disgraced and a nation shamed." As one of the report's authors—Richard Stone, president of the Jewish Council for Racial Equality—explains, "Many people in Britain are grasping the reality of institutionalized racism for the first time. Mr. and Mrs. Lawrence have woken up mainstream Britain to the fact that many black people face a serious problem. The fact that such a major institution as the police could have allowed such a serious injustice to occur...can't be due to chance."

But the shocking findings against the police were not the team's only conclusion. Macpherson and his colleagues made extensive recommendations about how to prevent such a miscarriage of justice from occurring in the future. While many of their recommendations focus on police recruitment, training, and disciplinary procedures, the report also urges reform of education. As part of Macpherson's proposed changes to the National Curriculum, every child in the nation should now be instructed in "valuing cultural diversity and preventing racism." The report also suggests key legal changes to make the prosecution of racists easier. These recommendations illustrate the new approach to legal thinking.

One member of the report's panel dismisses criticism of the report from a civil liberties standpoint as "crap" and "a destructive tactic that is motivated by those who want to discredit the report."

First, the report recommends that the police, and indeed all public institutions, adopt a new definition of racism. From now on, the definition of a racist incident in the United Kingdom is "any incident which is perceived to be racist by the victim or any other person."

Second, despite worries about racism within the police, the team urges that the powers of law enforcement be increased. In recommendation 38, the report suggests that "consideration be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented"—in short, suspending double jeopardy. This idea is now before the Law Commission, the body that evaluates proposed legal reform.

Third, the Macpherson panel urges that consideration be given to amending the law "to allow prosecution of offenses involving racist language or behavior...where such conduct can be proved to have taken place otherwise than in a public place." The Home Office (the rough equivalent of the Justice Department) is now considering this proposal.

Not everyone in Britain is happy about these proposed changes. During the parliamentary debate on the report, individual Tories ridiculed aspects of the report as "Orwellian." Others saw the definition of racism as unworkably subjective. The normally out-of-touch and staid Tory M.P. David Maclean speculated what could happen to four hypothetical characters having a drink after work.

Suppose, he said, "they come out of the pub and find that their car windshields have all been smashed. One man is black and says that the smashing of his windscreen is a racist incident. Am I right in understanding that the police would be obliged to record it as such in his case? Even worse: The black man does not complain to the police that the smashing of his windscreen is a racist incident, but others who spot the incident on the news that night or in the local paper the following week go to the police and say that it was a racist incident."

Other, less eccentric commentators worry that the changes will do more harm than good. Liberty, a British civil liberties group, thinks that the proposal to criminalize racist language spoken in private is an excessive intrusion into privacy. Its director, John Wadham, also points out that waiving the double jeopardy rule would do little to prevent future injustices. As he explains in a statement, "This is wrong in principle, would not have helped the Lawrence case, and, because of the racism in the criminal justice system, will be used more often against black people than white."

The report's supporters are unmoved by such critics. According to Lee Jasper, one of Britain's prominent black activists, "The right-wing press is trying to discredit some of the report's recommendations, referring to the 'thought police' and so on." As he explained to his supporters in a newsletter this year, "Society has to make a judgment: racism is unacceptable or it is not. Race hatred has to be eradicated and most of the changes recommended by the report would be a step in the right direction."

Richard Stone, Macpherson's fellow investigator, is equally adamant. Stone dismisses criticism of the report from a civil liberties standpoint as "crap" and "a destructive tactic that is motivated by those who want to discredit the report." As far as Stone is concerned, these issues naturally "came out of the inquiry and we could not avoid them....We simply said we thought it would be reasonable for them to be considered."

Stone is right when he says that these issues arose spontaneously out of the inquiry. Double jeopardy came up because the prime suspects were in fact tried and acquitted for Lawrence's

murder. Their acquittal was blamed largely on police ineptitude. This inflamed the Lawrences' sense of injustice and led many to argue that retrials should be allowed. The matter of prosecuting racist language in the home arose because the inquiry team sat through hours of secret surveillance videotapes shot by the police inside one suspect's home. While the police found nothing on the tapes to implicate the youths in Lawrence's murder, they did record foul racist language that Stone described as "ghastly" and an "incitement to violence."

But powerful though those experiences may be, the peculiar events surrounding Stephen Lawrence's murder —however unpleasant or unfair—do not explain why the British government, civil rights lawyers, and many activists are so keen to embrace these recommendations. Consider Mike Mansfield, one of Britain's top radical lawyers, who less than two years ago championed the cause of free speech during the infamous McDonald's libel trial, the longest civil trial in British history. (McDonald's sued two environmental activists for libel when they published a polemical leaflet critical of the hamburger chain.) Now he champions the idea of criminalizing offensive speech in the home. People like Mansfield once would have condemned Macpherson's recommendations for violating fundamental civil liberties. Their new perspective reflects a shift in expectations about what the law should do.

Two years ago, one of Britain's top radical lawyers championed the cause of free speech during the infamous McDonald's libel trial. Now he champions the idea of criminalizing offensive speech in the home.

In the past, the law was used simply to judge an individual's acts. To paraphrase the old adage, a man could judge another man's actions, but only God could judge your thoughts. Today, many former radicals expect something different from the law; they are adopting a more "divine" approach. It is now fashionable to use the law to "send messages" and to "correct" people's attitudes. Although nobody uses the term, the law is seen as a legitimate tool of social engineering, and it is now expected to reach right into people's minds (and homes) to effect change.

The proposal to outlaw racist language even when spoken in private epitomizes this approach. Far from being a strange aberration of one inquiry, this recommendation is entirely in line with the current direction of change in British law making. To date, most critics of this measure have said it would be an invasion of privacy, or argue that an Englishman's home should be his castle. While this is true enough, such arguments fall on deaf ears because they fail to confront what it is about this measure that makes it so attractive to so many.

Britain has never enjoyed the constitutional protection of speech that exists in the United States. Since 1965, it has been a crime in Britain to incite racial hatred. This law was introduced as a form of public-order legislation following inner-city race riots in the late '50s and early '60s.

Since then the law has been strengthened several times. Using racist language is now a criminal offense even in the soccer stands. The Crime, Justice, and Public Order Act of 1994 outlawed the publication of racially inflammatory material, and the Crime and Disorder Act of 1998 singled out racially motivated assaults for special punishment. The newly adopted definition of a "racist incident" ensures that the number of individuals punished for having the wrong attitude can only increase.

Nor is it simply racist behavior that is singled out for special punishment. The new reformers want to protect society from all manner of offensive attitudes and actions. As one of the most rigorous critics of the new trends in legal thinking, John Fitzpatrick of Kent University, explains, "These provisions should be seen in the context of offenses that generally seek to protect people from offensive behavior and language. It is now an arrestable offense in Britain to simply cause harassment, alarm, or distress."

This is an important shift. During the '60s and '70s the law against inciting racial hatred was at least justified on the basis of maintaining public order. The argument was that racial "threatening, abusive or insulting words or behavior" were likely to stir up racial hatred that would lead to a breach of the peace. In recent years, however, public order has been less of a concern. As U.S.-style feminist and critical legal theory has become fashionable in British universities and law schools, the sensibilities of the listener have became a new factor to consider in legal reform. Without First Amendment protection or a tradition of defending free speech to contend with, radical American legal thinking has had a far greater impact on the law in Britain than in the United States. It is now the offensive nature of insults rather than the actions that might follow such words or behavior that is seen as a matter of concern for British law.

The focus on protecting people from being offended has made the law less objective. As the new definition of racism demonstrates, if incidents are judged by what degree people suffer offense, then it is the feelings and sensibilities of particular individuals that define what is and is not criminal behavior. But of course there is a problem with this: What one per-

son deems offensive, another may find merely robust.

Fitzpatrick sees dangers in such a subjective approach. "This absurd barrage of laws promotes two dangerous ideas," he says. "Firstly, the idea that our fellow citizens are so feeble and impressionable that they must be sheltered from all manner of incitement and opinion. Secondly, that individuals and society have the right not to be offended by the sort of behavior which falls short of physical violence and was not previously deemed criminal."

The proposal to abolish the double jeopardy rule illustrates a related trend in today's legal reform movement: The elevation of the victim's interests. In the past, the rules of criminal law essentially governed the relationship between the state—which prosecuted crimes on behalf of society—and the defendant. Such basic rights as the right to trial by jury, the right to silence, the right to legal representation, and the presumption of innocence have long been in place to prevent the state from abusing its power in prosecuting crimes.

Today, however, perhaps because we see our fellow citizens (or even ourselves) as "feeble and impressionable," we have become sensitized to the interests of the victim in the criminal process. During the investigation into the murder of Stephen Lawrence, his parents were treated appallingly by the police. The Macpherson panel heard damning evidence about the ordeals they suffered. It is not surprising that this moved the inquiry team. It is less clear, however, why they drew general lessons for all victims from this evidence. The Macpherson report proposes that in future cases, victims or their families become "civil parties" in the criminal prosecution itself.

Fitzpatrick is critical of the desire to involve victims in the criminal process. "It is not healthy to allow victims too prominent a role even after conviction," he says. "In a civilized society retribution ought to be exercised rationally by the community as a whole and balanced against other considerations like the need to deter others, protect the public, and of course rehabilitate the defendant. It could also be said that encouraging victims to focus on their grievances is a very destructive institutional response."

Moreover, while victims should undoubtedly be treated with respect, it is dangerous to make their interests weigh too heavily in criminal prosecutions. Counterposing so-called "victims' rights" to the rights of the defendants in criminal trials will simply lead to unfair convictions.

The rule against double jeopardy is a safeguard that prevents the police from harassing an individual indefinitely. Critics of the existing double jeopardy rules argue that since the defendant has a right of appeal, why shouldn't the state have another bite at the cherry as well? But the state and the individual are not equal parties in a criminal prosecution. The defendant's liberty is at stake, and the state holds all the power. Due process and defendants' rights exist to level the playing field between the two parties. If obviously guilty defendants are escaping punishment, then the answer is to raise the standard of police investigations and prosecutions, not to lower the standard of trials.

From school bullying to fox hunting to food safety, Tony Blair and New Labour present themselves as latter-day knights in shining armor fighting for the weak. With radicals like these, who needs reactionaries?

But this view has become unfashionable in today's Britain. These days, defendants' rights are under attack. The right to silence is now severely qualified, trial by jury is under review, legal aid is being wiped out, defendants now have to disclose their defense strategy to the prosecution well in advance of trial, and in rape cases the cross-examination rights of defendants have been drastically restricted. All of these measures have been introduced in the name of victims' rights. It seems that when we worry too much about ourselves as victims, the price we pay is our right to a fair trial.

The Macpherson report illustrates the manner in which the rules are changing in Tony Blair's Britain. Eighteen years ago, another public inquiry investigated police behavior after anti-police riots in many inner-city areas with large ethnic minority communities. The eminent judge Lord Scarman chaired that inquiry. Many of Scarman's findings were similar to Macpherson's, but his report never received the radical backing that Macpherson has enjoyed. At that time, it was only the right-wing hang-'em-and-flog-'em brigade that demanded new laws and new powers of prosecution. Civil rights activists and community campaigners, in contrast, simply wanted to get the state and the police off the back of the black community.

Now the tables have turned. Today it is the anti-racists and the victims' rights campaigners who seek to extend the power of the authorities, while the eccentrics on the right are left to bleat about civil liberties. Rather than demanding to be left alone, the leftists are demanding protection and shelter. New Labour can embrace these new-style activists because it has portrayed itself as the victim's protector. From school bullying to fox hunting to food safety, Blair and New Labour like to present themselves as latter-day knights in shining armor fighting for the weak. With radicals like these, who needs reactionaries? ◆

Helen Searls (helensearls@easynet.co.uk), a British journalist who lives in Washington, D.C., is a regular columnist for the London-based current affairs monthly LM *and has written widely on British legal reform and civil liberties.*

Even Drug War Advocates Agree:

Mandatory Minimum Sentencing is Bad!

Stephen G. Breyer, Supreme Court Justice

"Mandatory sentencing laws should be abolished."

Source: United States Supreme Court Justice Stephen G. Breyer, in a speech at the University of Nebraska College, November 20, 1998.

Barry B. McCaffrey, "Drug Czar"

" - mandatory sentencing ties the hands of judges too tightly and prevents them from exercising discretion and good judgment." "By revising these sentencing rules, our intent is to broaden support for our drug policies, restore respect for the law and foster a more effective division of responsibility between federal, state and local law enforcement."

Source: Prepared Remarks by Barry R. McCaffrey, director, Office of National Drug Control Policy Before the First Annual Criminal Justice and Substance Abuse Conference, Albany, New York, June 29, 1999.

Joseph A. Califano, Jr., President, CASA

" Laws that prescribe mandatory sentences for possession of small amounts of marijuana are overkill. In general, mandatory sentences, especially those requiring drug and alcohol abusers and addicts to serve their entire sentence, are counterproductive. We need all the carrots and sticks we can muster to help these individuals shake their habit. Mandatory sentences take away any potential that an early release might hold as an incentive for such an inmate to enter treatment. Such sentences also remove the leverage that parole offers to get recently released inmates to continue treatment and aftercare or face a return to prison."

Source: Joseph A. Califano, Jr. Chairman and President, The National Center on Addiction and Substance Abuse at Columbia University on release of Non-Medical Marijuana: Rite of Passage or Russian Roulette? July 1999.

Let Judges *Judge*.
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Bottle Battle

The latest fight over wine labels is part of the ongoing struggle between wets and drys.

By Stanton Peele

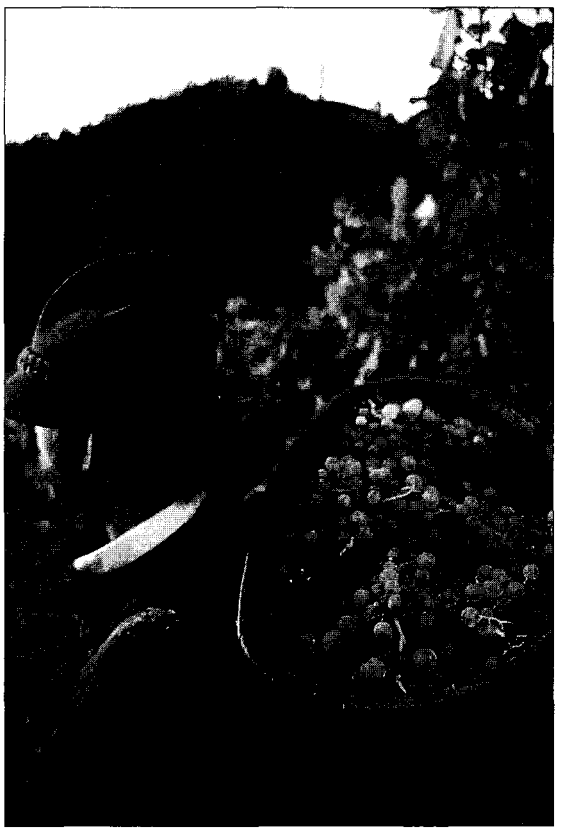
Since 1989, every bottle of beer, wine, and liquor sold in the United States has carried a two-part government warning that is by now almost as familiar as the bar code: "(1) According to the surgeon general, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

Soon you may start to notice a new sort of label on wine bottles. "To learn the health effects of wine consumption," the proposed label says, "send for the Federal Government's *Dietary Guidelines for Americans.*" If you like to be lectured, or you simply can't get enough of the thrilling prose generated by government-appointed committees, you can get a look at the guidelines by writing to the U.S. Department of Agriculture's Center for Nutrition Policy and Promotion or by visiting its Web site; addresses for both are helpfully provided.

But Strom Thurmond would prefer that you didn't. In fact, the Republican senator from South Carolina, who sponsored the legislation that brought us the surgeon general's warnings about drinking and pregnancy, drinking and driving, and drinking and health, was said to be "absolutely furious" when he heard that the Bureau of Alcohol, Tobacco, and Firearms (BATF) planned to let wineries mention the *Dietary Guidelines* on their labels.

What is so subversive about the federal government's own nutritional advice? Thurmond objects to two sentences in a discussion of alcohol that is otherwise unrelentingly negative: 1) "Alcoholic beverages have been used to enhance the enjoyment of meals by many societies throughout human history." 2) "Current evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals."

Although both of those statements are verifiably true, Thurmond worries that acknowledging any positive aspect to drinking will contribute to alcoholism. It's the sort of attitude you might expect from a Southern teetotaler who is old enough to be a paleoprohibitionist. What's surprising is that Thurmond's position is echoed by so many people who claim to speak in the name of science and public health.



Wine Whine: Strom Thurmond and others want to suppress the health benefits of moderate drinking.

Public health may be blind to the pleasure that people get from drinking, but a discipline aimed at minimizing morbidity and mortality has to take into account the large body of evidence that moderate alcohol consumption reduces the risk of heart disease and prolongs life. Beginning in the 1980s with the famous Framingham study, epidemiologists discovered that alcohol is good for the cardiovascular system. It combats atherosclerotic buildup in the blood vessels, which eventually results in the blockage characteristic of coronary artery disease—by far the leading killer of both men and women in this country. Because they are less prone to coronary artery disease, moderate drinkers live longer than abstainers.

Despite this discovery, public health information about alcohol in the United States continues to be almost uniformly negative. As a result, having learned about alcohol from grade school on, American students still don't appreciate the difference between hazardous and beneficial drinking. Seven in 10 high school seniors disapprove of adults having "one or two drinks nearly every day." Yet this is just the sort of drinking that is associated with greater longevity in the epidemiological studies. (Such a pattern also avoids the dangerous aspects of the drinking binges that are typical among high school and college students.)

The *Dietary Guidelines for Americans*, which are produced jointly by the Department of Agriculture and the Department of Health and Human Services (HHS), originally reflected the federal government's general tendency to portray drinking as something to be avoided. The 1990 edition, for example, said drinking alcoholic beverages "has no net health benefit, is linked with many health problems, is the cause of many accidents, and can lead to addiction. Their consumption is not recommended." But by 1995 (the guide-

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lines are revised every five years), the evidence of alcohol's health benefits had become so strong that it could no longer be ignored. After considerable debate, the committee of scientists appointed to revise the guidelines decided to include the two sentences that so upset Thurmond.

Committee member Marion Nestle, chairwoman of the Department of Nutrition and Food Studies at New York University, seemed amazed that she and her allies had managed to add some balance to the discussion of alcohol. "It's a miracle, a miracle," she told *The New York Times*. "It is a triumph of science and reason over politics. The committee process was very contentious, but the outcome makes the fuss seem worthwhile."

Philip Lee, assistant secretary for health at HHS and a wine drinker whose father owned a vineyard, was also pleased. "In my personal view," he said, "wine with meals in moderation is beneficial. There was a significant bias in the past against drinking. To move from anti-alcohol to health benefits is a big change." Elisabeth Holmgren, director of research and education at the Wine Institute, the vintners' trade group, pronounced herself "full of joy."

For all the celebrating, the section on alcohol in the *Dietary Guidelines* remained daunting. It said up front that alcohol "has effects that are harmful when consumed in excess. These effects of alcohol may alter judgment and can lead to dependency and a great many other serious health problems," including increases in "high blood pressure, stroke, heart disease, certain cancers, accidents, violence, suicides, birth defects, and overall mortality." Hence the guidelines urged moderation for those who choose to drink, meaning "no more than one drink per day for women and no more than two drinks per day for men." Finally, considerable space was devoted to specifying who should *not* drink, including alcoholics, children and adolescents, women who are pregnant or trying to conceive, and people using prescription drugs or operating machinery.

Still, from the perspective of vintners who were eager to counter the surgeon general's warnings on their products with something positive, the new guidelines presented an opportunity. In June 1996, the Wine Institute proposed a label similar to the one that was ultimately approved. The only difference was that the Wine Institute originally referred to "the health benefits of moderate wine consumption," which the BATF thought should be changed to "the health effects of wine consumption," lest it sound like a reason to drink.

Even though the label, especially as edited by the BATF, amounted to little more than a plug for the *Dietary Guidelines*, a coalition of 20 health organizations attacked the Wine Institute's request. The coalition included HHS, co-author of the very document cited on the label. In July 1997, John M. Eisenberg, acting secretary for health (Philip Lee had left HHS by then), told the BATF he was "deeply concerned" that the label "would be construed by the public as encouraging the consumption of alcoholic beverages." Surgeon General David Satcher warned that it would send "mixed messages."

Seeing the labeling request as part of a general campaign by vintners to make hay over reports of health benefits from alcohol, the Center for Science in the Public Interest issued a report in October 1997 entitled "Vintage Deception: The Wine Institute's Manipulation of Scientific Research to Promote Wine Consumption." The CSPI warned that publicizing alcohol's health benefits would encourage people to drink, resulting in more alcohol-related disease and social problems.

Given its longstanding resistance to anything that could be construed as a health claim for alcoholic beverages, the BATF was probably sympathetic to this argument. But as then–Treasury Secretary Robert Rubin noted in a March 1998 letter to Thurmond, the bureau simply does not have the legal or constitutional authority to reject a label statement that is neither false nor misleading. So last February, almost two years after the initial proposal, the BATF finally approved the Wine Institute's language, along with a label from California's Laurel Glen Winery that urged consumers to "consult your family doctor about the health effects of wine consumption."

The National Council on Alcoholism called the decision "potentially disastrous." Thurmond immediately proposed legislation that would overturn the BATF's decision and transfer authority for alcohol labels to HHS. The senator considers the bureau too cozy with the industry, and he seems to believe that HHS could use stricter criteria in reviewing labels, taking into account broader health issues associated with alcohol.

But the fate of the Wine Institute's label may not matter if anti-alcohol forces are successful in deleting the positive statements about moderate drinking from the 2000 edition of the *Dietary Guidelines*. Many of the submissions received by the committee that is working on the guidelines offer the sort of one-sided treatment that typifies a public health establishment preoccupied with alcoholism.

Consider the recommendations of Enoch Gordis, director of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), a subdivision of HHS. After the standard opening sentence, "Alcoholic beverages supply calories but few or no nutrients and can be addictive," Gordis proposes the line, "Individuals who do not now consume alcohol, for religious or any other reasons, should not begin to drink."

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Is it the government's role to advise people about religious matters? If a nondrinker changes his religious beliefs, and decides he wants to consume alcohol, why is that the government's business?

Tellingly, Gordis does not offer similar words of support for individuals whose religions condone the moderate consumption of alcoholic beverages. Indeed, he would delete from the 2000 edition of the *Dietary Guidelines* the seemingly noncontroversial statement that "alcoholic beverages have been used to enhance the enjoyment of meals by many societies throughout human history." (Though this sentence has been interpreted as a kind of endorsement, one of the scientists who worked on the 1995 pamphlet told *The New York Times* "it was written into the guidelines merely to justify having any language about alcohol in the first place.")

Turning to the benefits of alcohol, Gordis tries hard to minimize them. He says the coronary effects of moderate drinking are "primarily seen in men over 45 and post-menopausal women." These two groups are at the highest risk of death from heart disease, so it is not surprising that they are the two groups in which epidemiological studies find the biggest decreases in mortality. But since alcohol is believed to reduce the risk of heart disease by increasing production of HDL (the "good cholesterol"), it stands to reason that moderate drinking earlier in life would help prevent the accumulation of fatty deposits, although the impact of this effect would not be notable until later on, when people are prone to heart attacks.

Gordis also fails to note that all women with risk factors for heart disease—overweight, smoking, diabetes, high blood pressure, or high cholesterol—can reduce their chance of death by consuming alcohol. The Harvard Nurses' Health Study, the major study of the connection between drinking and mortality among women, found that about three-quarters of all subjects had at least one such risk factor and were likely to live longer if they drank moderately.

Gordis emphasizes what he calls ambiguities and contradictions in the research on the coronary benefits of alcohol. He notes that some research shows benefits from drinking can be gained from having as little as one drink every other day. And he goes on to cite dangers not only from heavier drinking but also from moderate drinking (breast cancer, for example).

Neither Gordis nor the *Dietary Guidelines* ever explain that a large body of persuasive evidence shows that people who drink moderately live longer. The main exception is premenopausal women with a family history of breast cancer, who should abstain or drink only very lightly. That is, when all of alcohol's potential effects are combined, alcohol is beneficial for most individuals. This would seem to be a relevant piece of information for people weighing the costs and benefits of drinking.

At a June meeting of epidemiologists in Montreal, several prestigious research organizations confirmed the link between moderate drinking and increased longevity. One of them was the Alcohol Research Group, the epidemiology center funded by Gordis's NIAAA. The group's study found that men who drank two to four drinks daily had the lowest mortality rate. If it is relevant for Gordis to tell Americans the minimum level of drinking that has been associated with prolonged life, surely it is also relevant to cite the maximum level at which benefits have been measured.

At a June meeting of epidemiologists in Montreal, several prestigious research organizations confirmed the link between moderate drinking and increased longevity.

Another study finding a significant reduction in mortality, for both men and women, came from a source even closer to Gordis—the NIAAA's own epidemiology division. NIAAA researcher Deborah Dawson reported that drinkers who were not alcoholics had a significantly lower mortality rate than abstainers.

Epidemiological research is complex and evolving, but it is by now nearly indisputable that alcohol protects against death from heart disease. A large number of Americans do not follow the drinking practices most likely to help them live longer, but this more often involves abstaining than drinking too much. According to surveys, half of Americans have not had a single drink in the last month.

Yet Gordis and like-minded public health officials wish to present what we know about alcohol in the most negative light possible, rather than offering straightforward scientific information. This is consistent with a longstanding anti-alcohol tradition in America, one whose advocates once spoke in the name of religion and morality but now wear the mantle of science. The battle over how to portray alcohol in the *Dietary Guidelines* and whether to allow wineries to publicize, even obliquely, the benefits of moderate drinking is a battle between those who portray alcohol as an unmitigated evil and those who have a more nuanced view.

Recall that the main objection to the Wine Institute label was based on the expectation that it would foster excessive drinking. In response to that concern, HHS commissioned a survey aimed at assessing how wine drinkers would react to the proposed label language. Only 3 percent of respondents said they would be inclined to drink more. The researchers concluded that "the risk of alcohol abuse resulting from the directional labels is negligible because they will not encourage a change in consumption patterns."

If so, you may wonder, what is the point of the label? Whether or not it actually sells more wine, the industry sees it as an important public relations victory. As Wine Institute President John De Luca puts it, "the label is an essential educational component of our public policy mission to counter efforts in some quarters to mischaracterize wine as a 'gateway drug' and a 'sin' that warrants higher taxes, trade limitations, and advertising restrictions." It is, in other words, part of the ongoing war over alcohol's place in our society, a war that did not end with Prohibition or its repeal.

Stanton Peele (speele@ibm.net), a psychologist specializing in drug use and addiction, consults with the Wine Institute and other industry groups on social and cultural aspects of drinking.

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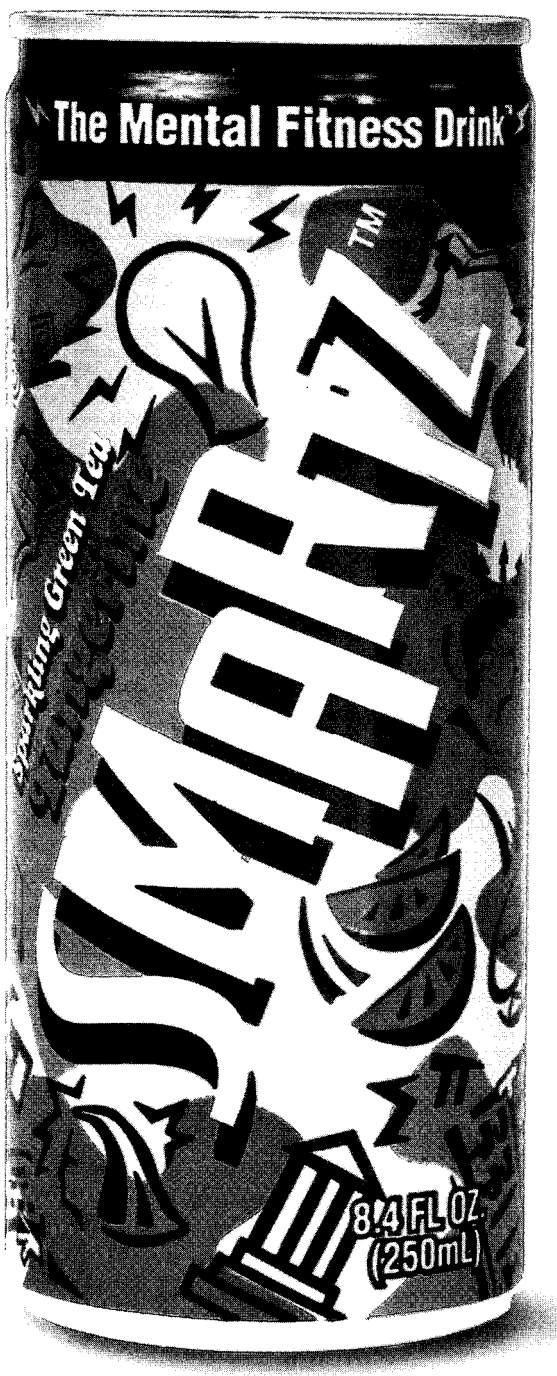

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How Do You Misspell *Relief*?

The GOP's empty promises of regulatory reform

By David Mastio

Environmental Protection Agency chief Carol Browner was not her normal polished self. She was slightly flushed, and the adjectives poured from her mouth: "extreme," "illogical," "cruel," "bizarre."

Anything that gets Browner so worked up must be good news for Republicans and their corporate allies. Indeed, business groups were gloating: "U.S. Chamber smokes EPA on clean air rules," said one press release. Conservative Republicans crowed in front of every TV camera they could find. Environmental groups went over the edge: The U.S. Court of Appeals for the District of Columbia Circuit "has just declared chemical warfare on the lungs of our children," said Sierra Club Executive Director Carl Pope.

You may not have heard anything about the decision that caused all this fuss. The news hit on a Friday night, when few Americans are paying attention to public policy matters. And Browner's scathing reaction came at a uniquely Washington event: a hearing on a ruling about a regulation produced in reaction to a law passed 29 years ago. Not scintillating stuff.

But the American economy often turns on boring issues. In *American Trucking Associations et al. v. U.S. Environmental Protection Agency*, a decision issued in early summer, the D.C. Circuit ruled that a whole raft of new federal regulations to reduce smog, soot, and pollution that drifts across state lines should either be rewritten or put on hold indefinitely. The rules Vice President Al Gore called the "centerpiece" of the Clinton administration's environmental program would have cost tens, maybe hundreds, of billions of dollars to implement. Understandably, business groups hated them.

Still, the celebration over *American Trucking* may have been a bit premature. Buried in the boring details of the decision, which overturned the regulations on obscure constitutional grounds, is a devastating defeat for Republican plans to rein in tough environmental regulations like the ones the court struck down.

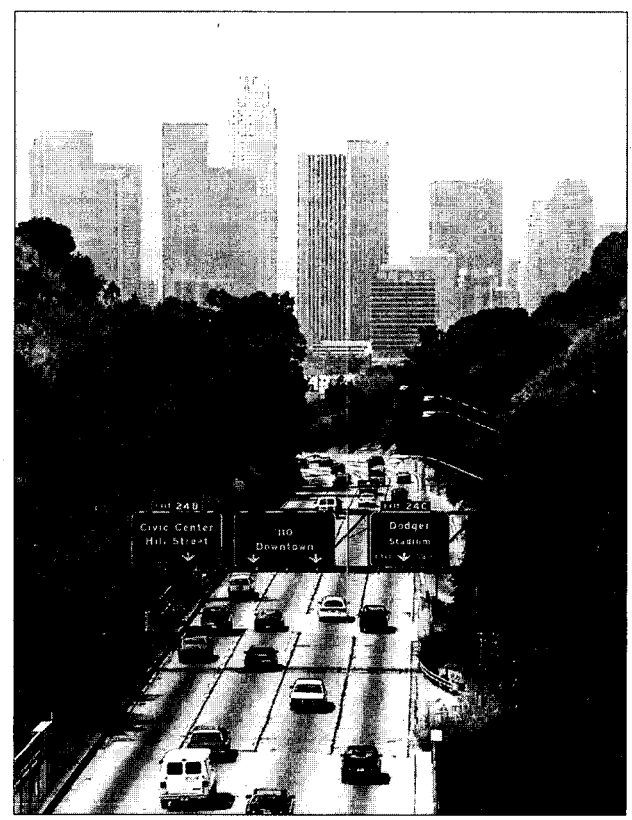
You may recall the 10-point, poll-tested "Contract with America" that Republicans claimed was their key to taking control of Congress from the Democrats in the "revolution" of 1994. Among the few provisions of the contract that actually made it into law was the Unfunded Mandates Reform Act, known as UMRA by the judges, regulators, and congressional staffers who have to deal with it. The law was intended to stop federal agencies from writing new rules and then passing the cost of implementing them onto state and local governments or business.

When Congress passed UMRA in 1995, environmentalists screamed. They said it would bury further attempts to clean the air and water under a pile of red tape. One of the law's biggest proponents, Rep. David McIntosh (R-Ind.), said, "If we don't do something about [regulation], people are going to say that Congress only talks a big game."

Judging from the D.C. Circuit's ruling in *American Trucking*, UMRA's opponents and supporters were both wrong. It turns out that all Congress did was "talk a big game."

UMRA was supposed to require the EPA and other federal agencies to produce a "regulatory impact statement" before issuing new rules, a process aimed at minimizing the cost of regulations. But as the appeals court noted, the law said that "any compliance or noncompliance with the provisions of [UMRA] shall not be subject to judicial review, [nor shall any] provision of [UMRA] be construed to be enforceable by any person in any judicial action." In other words, the Republican Congress wrote into its much-touted regulatory reform law a provision that tells federal agencies there will be no consequences should they fail to abide by the law.

Washington attorneys C. Boyden Gray (a trustee of the Reason Foundation, publisher of this magazine) and Alan Charles Raul wrote a brief in *American Trucking* on behalf of House Commerce Committee Chairman Tom Bliley (R-Va.). Although



Keep on Truckin': The *American Trucking* case struck down a host of pollution-related regulations.

AP / WIDE WORLD PHOTO

they cited UMRA provisions as one of the grounds for voiding the FDA's regulations, Raul says they knew the law was unenforceable. Bliley, one of the most vociferous regulatory reformers in the House, refused several interview requests.

Surely this must be some kind of mistake. Surely the Republicans were being straight with us when they said federal regulators had gone too far and needed to be stopped. It would be easier to believe that UMRA's toothlessness was accidental if this were the only time Republicans had loudly proclaimed regulatory reform while doing nothing of consequence. But it is part of a pattern.

About a year after Congress passed UMRA, it passed the Small Business Regulatory Enforcement Fairness Act. The Republicans promised a tool to stop regulators from squashing small businesses under piles of inane regulations. But again, courts have since ruled that the law includes language making it essentially unenforceable.

Even when the laws Republicans pass actually have teeth, Republicans apparently are afraid to use them. Also in 1996, Congress approved a requirement that each new rule created by a federal agency be submitted to Congress for review. Since 1996, federal agencies have sent nearly 13,000 rules to Congress. Not a single one has been rejected. The people who write these rules may have good intentions and plenty of expertise, but 13,000 perfect rules in a row would still be a hell of a run.

This pattern of anti-regulatory bluster combined with little real-world impact goes back to the beginning of the first Reagan administration. In the glow of the Gipper's triumph over Jimmy Carter, Ronald Reagan appointed his new vice president, George Bush, to head a group that would "cut away the thicket of irresponsible and senseless regulations." And to back the study group with action, Reagan issued a 60-day moratorium on new regulations.

A year later, Bush turned in his recommendations. First and most important was the idea that the Office of Management and Budget should supervise all new regulations, checking to see that they were cost-effective and coordinated with other federal agencies. The Bush committee estimated that adopting this proposal could save local governments, business, and consumers hundreds of billions of dollars a year.

The proposal was implemented by executive order in 1982, with little apparent result. In the first year after the order was issued, the alphabet soup of regulatory agencies spewed forth more than 40 new regulations costing more than $100 million a year, nearly as many as the year before. Chief among the regulations Bush thought he could stop was the requirement for automatic seat belts or air bags in cars. Today, you will try in vain to buy a new car that is not equipped with "passive restraints."

Eight years later, when Bush was elected president, he assigned *his* new v.p., Dan Quayle, to take up the regulatory reform banner through a "Council on Competitiveness." Predictably, there was a lot of talk and a moratorium and a host of recommendations. Environmentalists issued reports about dire threats to health and safety easily averted by just one more federal rule, one more new mandate. A decade later, it's hard to see that the administration's efforts made much difference.

"In retrospect, it mostly looks like delaying tactics, even symbolism," says Jonathan Tolman, who worked on Quayle's council and now works for the House Republican Policy Committee. "It's disturbing. Big business says they're for regulatory reform, but when you get down to it they really don't want it." He speculates that established firms have found that regulations give them a competitive advantage. Republicans end up giving their big-money allies about as much reform as they want.

Much has been made in recent months of the lies that emanate from the Clinton White House. Given the uncertain relationship between "regulatory reform" and reality during the last two decades, perhaps Republicans should train their truth detectors on themselves.

David Mastio, a contributing editor to USA Today, *covers regulation for* The Detroit News.

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Personal Soundtracks

Two decades of mix-and-match music—and a more harmonious world

By RiShawn Biddle

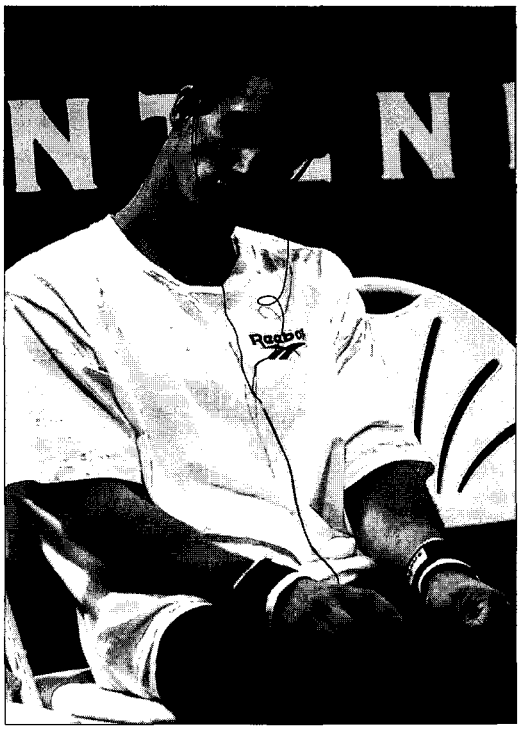
It's been 20 years since Sony started selling the Walkman, rescuing us from the sounds of the '70s. How it used to rankle, to be forced to listen to "Stayin' Alive," "Disco Duck," or whatever else someone nearby wanted to hear. Until 1979, there was no way to reconcile his need for bad music with your need to be free of it. If you wanted a stereo system you could carry while biking, skateboarding, or shopping, your only option was the boombox, better known in my old neighborhood as the "ghettoblaster." And blast it certainly did.

With the Sony Walkman and its clones, we could tote around our own music without imposing it on everyone else. For teenagers everywhere, this was the best thing since blue jeans and vending machines. Tiny, lightweight, and portable, the Walkman could destroy their eardrums without annoying anyone with more taste or common sense. It's also been coach, concert hall, and personal reader for millions of workout warriors, housewives, and retirees. For travelers, it is a trusty companion, something to ward off talkative salesmen and grandmothers loaded with wallet-size photos. Anywhere you go, you can tune in to joyful noise and kick boredom to the curb.

The Walkman has personalized such mass media as radio and records. Headsets create a sense of intimacy; the stereo sound lets listeners feel like they're in a studio or a concert hall, no matter what environment actually surrounds them. The Walkman expands our choices, lets us remake the world around us without impinging on our neighbors' ability to do the same. You can stand in Grand Central Station during the afternoon rush hour and have one foot in Lilith Fair; or in a studio session with Mingus, Monk, or Miles Davis; or in a shouting match with Rush Limbaugh.

My conservative friend Marty Dekom can ignore Bill Clinton just by putting on his headphones. "I can watch CNN and listen to Tom Petty," he reports happily. "I can attend tree-hugging rallies for eco-bozos and enjoy AC/DC." Michael Marsden, co-editor of *The Journal of Popular Film and Television*, calls this a metaphysical form of personal space. "It's your personal space that you've created, in a world in which we don't have a lot of personal space," he explains. "It's a totally private world."

The Walkman lets you merge the scenery around you with the soundtrack of your choice. Deroy Murdock of the Atlas Economic Research Institute found this out while touring Europe, fusing the Old World with the dancing bears and tie-dyes of the Grateful Dead. "I learned those songs," he recalls, "while peering out the windows of trains and buses across the continent. Even as I hear those songs today, I associate them with the mountains, plains, and castles of the Old World."



Your Own Private Idaho: Gymnast John Roethlisberger listens to music during competition at the 1996 Olympics.

AP / WIDE WORLD PHOTO

You don't have to travel that far to experience this. It worked for me in my own back yard. I wore my Walkman on a recent Saturday afternoon, walking up Westwood Boulevard in Los Angeles. Latin music pumped through the headset. A woman in a tiny black T-shirt and tight red shorts jogged past me, her Husky-Saluki mutt in tow. The sun, the woman, and the music made a luscious combination, blocking out the roar of traffic rushing toward the Santa Monica Freeway.

Some don't like the Walkman. In *The Closing of the American Mind*, cultural critic Allan Bloom wrote that the Walkman-tugging teen reduces centuries of Western cultural progress into "a nonstop...masturbational fantasy" celebrating libertinism. The neo-Luddite writer John Zerzan, for whom art itself prevents people from truly experiencing nature, says the Walkman is part of an "ensemble of technologies" that cause a "protective sort of withdrawal from social connections." And any card-carrying member of the hand-wringing morals brigade would lump those magic earphones in with video games and TV violence as abettors of aberrant and abhorrent teen behavior.

Then there's Thomas Lipscomb, chairman of the Center for the Digital Future. He thinks the Walkman is the electronic equivalent of soma, the happiness drug in *Brave New World*. "It closes you in an airtight bubble of sound," he complains. "It's a sensory depressant." What's more, he says, it prolongs adolescence, stifles social contact, and keeps people from expanding their intellectual horizons.

But why should wearing a headset

be more dangerous than any other activity one might do with oneself, from fishing to watching a movie? It is as innocuous as raindrops. In fact, the Walkman is less of a barrier to social contact, because it is so flexible and portable. You can always take off your earphones, listen to street musicians, talk to a neighbor, or flirt with the person across the hallway. Cracks writer David Horowitz, "I've never sat in a living room of people who are listening to their Sony Walkmen instead of talking to each other."

The Walkman is neither hi-fi Prozac nor a perpetual alienation machine. If anything, it makes listening more interactive. We can mix and match our music like clothes, creating our own playlists and carrying them with us wherever we go. This has subtly changed our expectations in the marketplace, forcing the music industry to accept our eagerness to rearrange their products. Now CD-ROMs such as *Xplora 1: Peter Gabriel's Secret World* let consumers assemble sampled beats and film clips into personalized versions of their favorite tunes and music videos. And Web sites such as CDNow allow you to buy individual songs and create a customized compact disc.

The new interactivity extends to other cultural activities. We can all be pundits and wordsmiths now. With talk radio, every loudmouthed listener in town can take a turn at the microphone. Some writers now post their work on Web sites like *Bubbe's Back Porch*, where the line between reader and writer becomes blurry. With hypertext fiction, a form of storytelling similar to games like Myst, that line almost disappears: the reader participates in creating the story, which takes a different form each time it is read. Even cuisine is becoming interactive: There are restaurants now where the diners join the chefs in making meals.

Sony's little music machine didn't *start* all of the above. But it paved the path, by giving us a taste of privacy, interaction, and choice. The Walkman saved us from hearing "I Will Survive" another 10,000 times. It deserves our thanks.

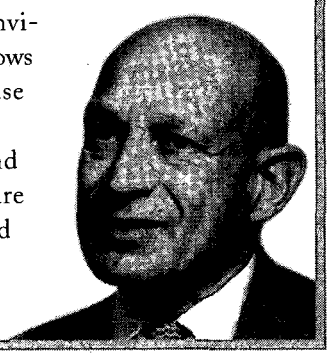
RiShawn Biddle (rishawn@exofuse.com) is REASON*'s 1999 Burton C. Gray Memorial Intern.*

"Julian Simon loved to make bets. Fifty years from now readers who peruse *Earth in the Balance* by Albert Gore and *Hoodwinking the Nation* by Julian Simon will giggle at one of them. Let's bet which."

—Ben Wattenberg

"Why is there so much false bad news about the environment, resources, and population?" That's the question the late Julian L. Simon set out to answer in *Hoodwinking the Nation*. He analyzes the role of the media in the dissemination of so much false information about environmental issues, shows how politicians misuse statistics to achieve their policy goals, and explains why people are more receptive to bad than to good news.

Hoodwinking the Nation
by Julian Simon
140 pp./$29.95 cloth



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Big Guns

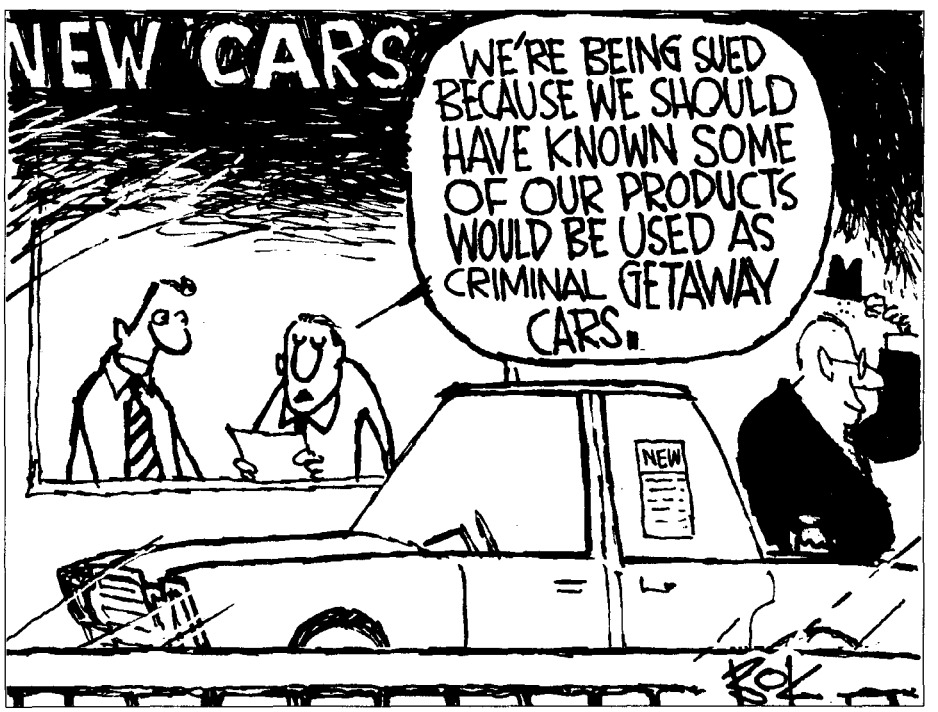
Plaintiffs' lawyers declare themselves the "fourth branch of government" and go after firearms.

By Walter Olson

You don't need to be a big Second Amendment booster to be appalled by the newest round of litigation against gun makers. All you have to do is take a look at some of the coverage that has appeared recently in press outlets that are basically sympathetic to gun control, like *Salon*, the *American Lawyer*, the *National Law Journal*, and *The New Yorker*.

Perhaps you've heard that big-city mayors had to sue because they've been losing sleep over how freely guns are bought and sold in this country. Well, it's funny about that. According to Jake Tapper in the July 13 *Salon*, many of the cities suing gun makers are themselves major distributors of guns, police surplus and otherwise, to the used market. Disposing of firearms in "gun swaps," generally with no questions asked, has been a handy way for localities like Boston, Detroit, and Alameda County, California, to defray the cost of new police weapons. Boston, for example, attached no strings to resale when it recently got rid of more than 3,000 .38s, even though it has now endorsed a new legal theory that private vendors should be liable because they displayed "willful blindness" to what happened after guns left their hands.

For hypocrisy, it's hard to top that. Not impossible, though. New Orleans was the first city to jump on the gun lawsuit train: "We have been so focused here in New Orleans on getting guns off the street and protecting our citizens," Mayor Marc Morial declared at the press conference. Yet New Orleans recently scored what may be the biggest deal of its kind ever in the U.S. when it recycled to street use through an Indiana broker some 7,300 guns, most of which it had confiscated from lawbreakers. These included TEC-9s and various other semiautomatics whose importation and manufacture Congress banned in 1994.



CHIP BOK

The municipal gun suits demand that manufacturers equip their wares with safety locks, but New Orleans officials attached no such condition to the resale of the guns in their own inventory, only two of which had locks among the thousands they shipped. Nor did they require that the guns be resold only to other police departments, a financially unwelcome stipulation since weapons may fetch only half as much on the market when that particular condition is attached.

Another of the novel legal theories holds it unconscionable for manufacturers to cater to the full demand of shops located in gun-friendly states and suburbs if they can reasonably figure that a certain percentage of the merchandise will wind up in the hands of city residents. But the Big Easy—which merely stipulated that the weapons not be immediately resold in Louisiana ("not in my bayou," as *Salon*'s Tapper puts it)—could easily have predicted what would happen soon after some of the guns in the deal were initially shipped to Texas: They began showing up at New Orleans shops.

With this sort of embarrassment in the wings, whatever possessed the mayors to dream up these suits? They weren't the ones who dreamed them up. As the June *American Lawyer* recounts in detail, the gun litigation got under way when a bunch of the nation's richest trial lawyers began looking for new worlds to conquer after the successful mugging of the tobacco industry. Following a December pow-wow in Chicago to get their story straight, they began flying around the country to "pitch their services to mayors and city attorneys." Under the terms of contingency fee agreements with the cities, they stand to pocket as much as 30 percent of any trial winnings.

These lawyers are not really interested in law, if by that you mean the old-fashioned idea of a rule that's announced in advance so people covered by it know what's expected of them. Instead, they are quite openly spinning out new liability theories as fast as they can dream them up, asking the courts to penalize the gun companies for not pre-emptively anticipating

and complying with those theories in the past. No one seems to care about the dangers of this approach. The retroactive application of new liability theories to tobacco companies was met with almost unanimous approval from the press and scarcely a peep of protest from the business community (see "Retro Style," August/September 1997). Even now that it's clear the principle will be applied to plunder one industry after another, it's hard to get the business community to offer any resistance in principle, or to detect any real solidarity between people in different industries.

How worried are the plaintiffs' lawyers about going to trial and losing? "As in the war against tobacco, winning in court isn't necessarily the objective of the lawyers," observes Peter J. Boyer in a fascinating article about the origins of these cases in the May 17 *New Yorker*. "If twenty cities do bring suits, defending against them, according to some estimates, could cost the gun manufacturers as much as a million dollars a day." That would force gun makers to the negotiating table as the only alternative to bankruptcy.

"Judge shopping" also plays a role in the strategy, again in line with the tobacco precedent. (See "Firing Squad," May 1999.) Some friendly state judges are willing to dispense "home cooking" to locally influential counsel. On the federal side, according to the July 19 *National Law Journal*, the NAACP is desperately angling to get its new suit against gun makers heard by Brooklyn's extremely liberal senior-status judge Jack Weinstein, because the underlying theories "might not succeed in any other courtroom in America"—a truly damning commentary on how weak the case is. Weinstein, you may recall, presided over *Hamilton v. Accu-Tek*, the only case so far in which a jury has bought the idea of holding manufacturers responsible for gun violence because they should have known that some of their products would end up in the hands of criminals. The jurors did not accept this theory easily: During six days of deliberations, they repeatedly told Weinstein they could not reach agreement; he refused to accept a deadlock.

Judges like Weinstein may well be reversed on appeal, but in the meantime the idea is to create as much uncertainty as

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What is your Will?

possible, capitalizing on the difficulty of defending against many different theories in many different places at once, all this aside from the irreducible random factor in all litigation. "[We] have the resources to start a war instead of taking little pot-shots," trial lawyer John Coale told *The New Yorker*'s Boyer. "Well, we've started a war." Attorney Dennis Henigan of the Center to Prevent Handgun Violence said what he's after is to create a "credible threat of liability....The more cities that file, the greater is the threat. So what you really want is a diversity of cases in lots of different regions, lots of different courts to create the greatest threat of liability." You might call this a "spaghetti strategy": Throw a potful against the wall and see if any strands stick. You might also compare it with what the Irish Republican Army said after its Brighton hotel bombing failed to assassinate Margaret Thatcher: "We only have to be lucky once. You have to be lucky every time."

Polls show the gun suits are unpopular even among voters who are willing to entertain other gun control proposals. Yet it's hard to say when or if the press will turn critical. *The New Yorker*'s account depicts attorney Coale openly chortling over the success of the tobacco lawyers in getting the media to sing in unison out of their songbook. "With Coale directing the political and media ends of the case," as Boyer tells it, "the plaintiffs' lawyers became the prime creators and marketers of a national narrative entitled 'Big Tobacco.' 'Oh, hee-hee-hee, we just started in on Big Tobacco,' says Coale, delighting in the memory. 'You know, it was "let's just refer to 'em as Big Tobacco," Big Tobacco, Big Tobacco, Big Tobacco! Pretty soon, everybody's talking Big Tobacco.' "

You'd think the press, if only from a residuum of professional pride, would at some point revolt against a campaign of manipulation so thorough and profitable that its practitioners can gloat about it in the pages of mass-circulation weeklies. But no: Many at major networks and newspapers are apparently content to get suckered the same way in this round too. According to Boyer, the "most important lessons" Henigan brought to the group of trial lawyers for whom Coale is a spokesman "had nothing to do with litigation" but instead related to manipulating public opinion. "Henigan believes that it is imperative to steer the argument about guns away from the problematic area of criminal use, with its inconvenient focus on criminals" and instead recast the gun debate "as a health issue...guns should be thought of as pathogens, and gun ownership, perhaps, as a disease." Once again, the tobacco episode will serve as precedent, this time by reference to the invaluable help Dr. David Kessler gave the litigators when, from his perch at the Food and Drug Administration, he declared that smoking was a "pediatric disease."

In keeping the tobacco companies pinned down and under constant public fire, *The New Yorker*'s Boyer comments, "Kessler proved a particularly valuable ally" to the lawyers. " 'We were in touch with people at the F.D.A. all the time,' Coale says. 'There were a lot of faxes, phone calls, and other forms of communication being exchanged.' " At the time, those who suspected the FDA of playing footsie with the trial lawyers were assailed as demeaning the integrity of a group of independent-minded public servants. Now we learn better.

You'd think the press would revolt against a campaign of manipulation so thorough and profitable that its practitioners gloat about it in the pages of mass-circulation weeklies. But no.

Boyer notes other political connections that helped the trial lawyers. "When Hugh Rodham, a Florida lawyer who had no experience with product liability, was brought into the group as a 'lead litigator,' few supposed that it was for any reason other than that he was Hillary Clinton's brother," he explains. "The move proved fruitful when, over Thanksgiving with the first family in 1996, Rodham suggested to his brother-in-law the President that the White House might want to get involved in settlement talks." Clinton agreed and "put his most trusted aide, Bruce Lindsey, on the issue." By now, Boyer concludes, given their power to decide which suits to file next and how to prosecute them, "Coale and his colleagues are guiding the national agenda—a new means of public-policy making that can't be found in any civics book."

The reason it can't be found in any civics book is probably that it's so alien to the form of government the Founders thought they were giving us. The June *American Lawyer*, in its article recounting the origins of the firearms litigation, reports that prominent New Orleans trial lawyer Wendell Gauthier was the first to talk his colleagues into suing gun makers, even though their pockets weren't all that deep. The suit "fit with Gauthier's notion of the plaintiffs bar as a *de facto* fourth branch of government, one that achieved regulation through litigation where legislation failed."

Remember, it's not *our* side that's decided to call the trial lawyers a de facto fourth branch of government: That's *their* view of the matter, in the words of the *American Lawyer*. Of course, there remain a few differences between this new Fourth Branch and the three original branches the Founders had in mind. For one thing, those who labor in the other three branches of government aren't supposed to use their coercive powers to turn themselves into billionaires.

For another, they have to submit to a great deal of public scrutiny, nowadays including sunshine laws, extensive financial disclosures and blind trusts, freedom of information statutes, and much more, whereas the back rooms where the Fourth Branch does its work of recruiting governmental clients and negotiating settlements remain off-limits to public scrutiny. And then there's a difference which some consider even more important, namely that the Fourth Branch doesn't risk getting slowed down by that anachronistic hold-over of an earlier system of governance known as "elections." ◆

Contributing Editor Walter Olson (hambo@home.com), a senior fellow at the Manhattan Institute, edits the new Web site Overlawyered.com.

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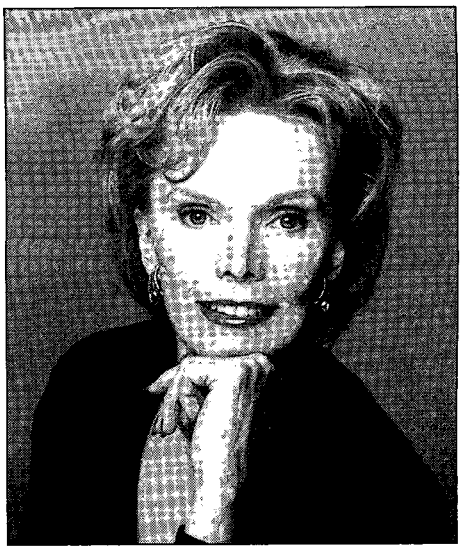

by Leil Lowndes

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Ways to Be Wrong

By John J. Pitney Jr.

Name-Dropping: From FDR On, by John Kenneth Galbraith, Boston: Houghton Mifflin, 194 pages, $26.00

When Government Was Good: Memories of a Life in Politics, by Henry S. Reuss, Madison, Wis.: University of Wisconsin Press, 185 pages, $22.95

There's a right way to be wrong and a wrong way to be wrong. Some supporters of big, intrusive government manage to be witty, erudite, and tolerant of opposing views. If we must have statists, they're the ones to have. Alas, too many others are crabby, smug, and dogmatic—the kind who'd serve as the bad guys in an Ayn Rand novel.

John Kenneth Galbraith is of the first type, a sterling model of how to err in style. At the age of 91, he can look back on a rewarding life as a university professor, political adviser, ambassador to India, and debating partner of such conservatives as William F. Buckley Jr. Though he's seldom been right, he's always been a gentleman. And he has always been a graceful writer, as we see in *Name-Dropping*, a short, readable volume that offers personality sketches of FDR, JFK, and other famous figures he has known.

Galbraith has a sharp eye for the telling anecdote. As he reminds us here, Bill Clinton was not the first president who tried to be all things to all people. In separate meetings with FDR, two aides gave contradictory advice, and both times he replied, "You are perfectly right." When Eleanor objected that he could not possibly agree with such opposing arguments, he answered, "Eleanor, you are perfectly right."

Dairyland Dullard: The memoirs of Wisconsin Rep. Henry S. Reuss (pictured with his family), who served in the House from 1955 to 1983, unintentionally make the case for term limits.

Galbraith keeps the focus on his subjects, minimizing his own part in historical events. Here is his description of working on FDR's 1940 speechwriting team: "We found out how much of what we had written had survived when we heard the President speak on the radio. We listened with some attention." He is also refreshingly candid about his own failures. Looking back on campaign addresses he drafted for Adlai Stevenson, he now sees the fatal flaw: "I had written seeking the approval of the candidate, his campaign acolytes and myself, not that of the larger public, the electorate as a whole."

Name-Dropping, sad to say, is not really an original book. In his first chapter, Galbraith admits there is "an occasional event or personal encounter of which I have told before." That is an understatement: He has recycled a distressingly large portion of the material from his 1981 autobiography, *A Life in Our Times*. The earlier work supplies much more detail and documentation, so it is the place to look for historical reference.

Although Galbraith is wrong in the right way, he is still wrong. He acknowledges JFK's health problems and extramarital affairs but dismisses them as irrelevant to his presidency. Many historians would disagree. Before his 1961 summit with Khrushchev, JFK took medications that may have impaired his judgment. And his personal misbehavior constituted a wild security risk, exposing him to tacit blackmail by J. Edgar Hoover. He may have been just as charming as Galbraith describes, but charm is no excuse for recklessness.

There is a quaint frozen-in-time quality to Galbraith's thought—sort of Austin Powers without the bad teeth and mojo. Looking at Great Society welfare programs, he maintains that the solution to poverty is simply to give money to poor people, without necessarily expecting them to do work. In the decades since LBJ's War on Poverty, all but the staunchest statists have surrendered to reality and abandoned such notions. Oddly, Galbraith vents inordinate anger about America's effort to

defeat Soviet communism in the Cold War. Austin—I mean, Mr. Galbraith...we won.

Galbraith provides the foreword to the autobiography of Henry S. Reuss, a liberal Democrat who represented Milwaukee in Congress from 1955 to 1983. Galbraith's contribution is pretty much the only good thing about this book, which unintentionally makes a splendid case for term limits.

Granted, you would expect a REASON reviewer to pan something titled *When Government Was Good.* But I opened the cover with hope. During his career, Reuss witnessed major events and served with great characters: Sam Rayburn, Bella Abzug, Tip O'Neill, and Melvin Laird, to name a few. Notwithstanding his love for

Elected officials contract arrogance the way coal miners get black lung disease: just by breathing the air for too long. Without meaning to, Reuss helps us understand how government goes bad.

the welfare state, he could have given us real insights into the personalities and private debates that shaped a critical period in congressional history.

He doesn't. Memoirs are supposed to have memories, but this book makes only passing reference to the big names and backstage debates. It's all Reuss all the time, bent on showing the wrong way to be wrong.

After an unenlightening account of Reuss' early years, the book treats his congressional career as a series of position papers, detailing why he sponsored this measure or opposed that one. Here's a sample: "After much study I drew up an amendment to the revenue-sharing legislation of 1970, conditioning it on a good-faith state effort to draw up a long-term modern governments plan. I set this forth at length in my 1970 book, *Revenue-Sharing: Crutch or Catalyst for State-Local Government?*"

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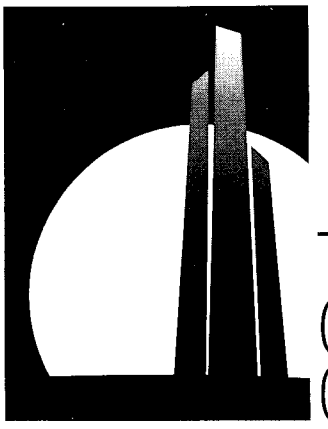

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Makes you want to read more, doesn't it? Seldom has a book this short been this tedious.

Despite its brevity, *When Government Was Good* shows blatant signs of padding. There are many lengthy block quotations from long-ago speeches and articles, along with the typical staged congressional photos (on numbered pages, not inserts). When Reuss runs out of old bills to talk about, he pontificates on current issues.

Reuss takes credit for many things, including terms in common usage. He recalls appearing before the Ways and Means Committee to talk about tax loopholes. He says he is still proud of his elaborate exhibit, "which I called my Flow Chart." Reading that line, I couldn't help picturing Dr. Evil doing two-finger quotation marks around "flow chart."

There are some items for which Reuss conveniently neglects to take credit. He devotes a chapter to the House Banking Committee, which he chaired from 1975 through 1980. (The part where he assumes the chairmanship is titled "The Banking Committee Reborn.") While mentioning the 1980 banking law, the chapter overlooks its key provision, which increased federal insurance on savings and loan accounts. By signaling the operators of shaky thrifts that taxpayers would bail them out from bad investments, the law triggered the S&L debacle of the 1980s.

Reuss tells how he led a minor investigation of Watergate but leaves out his major proposal for ending the controversy. On June 1, 1973, he wrote an article urging Nixon and Agnew both to resign so that Democratic House Speaker Carl Albert could become president. (Agnew's own ethics scandal had not yet come to light.) During the Lewinsky affair, Democrats accused the GOP of attempting a "coup," but never did Republicans dream of something as nakedly partisan as Reuss' proposal.

Reuss shows us just how mean-spirited a liberal can be. He applauds a 1998 stock market downturn because it may have cost the affluent "enough wealth and income to measurably decrease inequality." Apart from its sheer nastiness, that sentiment is also nonsensical. More than 40 percent of American households own stock, either directly or indirectly: Market crashes hurt the not-so-rich types whose pension funds lose value. Fortunately, stocks recovered after Reuss wrote that line.

One brief anecdote is revealing, about both Reuss and other politicians. An ardent supporter of the St. Lawrence Seaway in the 1950s, he was disgusted to learn at a field hearing that some of his constituents favored private-sector financing. He recalls approvingly that a Democratic colleague slipped him a note saying, "You're too good for these people!"

"Too good for these people": There's a sentiment that politicians often harbor but rarely utter. Elected officials contract arrogance the way coal miners get black lung disease: just by breathing the air for too long. Without meaning to, Reuss helps us understand how government goes bad.

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Artful Dodger

By David R. Henderson

The Return of Depression Economics, by Paul Krugman, New York: W.W. Norton, 176 pages, $23.95

Paul Krugman, an economics professor at MIT, is probably the country's most famous economist under the age of 50. In addition to knocking out interesting technical articles, mainly on international economics, Krugman writes highly readable articles and books for a general audience. His latest popular book is *The Return of Depression Economics*, which displays his familiar strengths and weaknesses.

Krugman's main strength is his ability to weave a complex yet understandable story about recent economic events. His main weakness, which becomes more apparent the more you read him, is his tendency to leave out important facts that undercut his view of the world. A more glaring weakness is his sarcasm and fondness for putdowns, which make it easier for him to dismiss rather than refute thoughtful people with different views.

The title of this book illustrates another Krugman weakness: his tendency, which has gotten stronger as he has gotten more famous, to exaggerate. When I think of a depression, I think of a substantial decline in an economy's output: At the trough of America's Great Depression in the early 1930s, output was 30 percent below its 1929 peak. By Krugman's own admission, Japan, the only big economy in the world that has suffered a prolonged slump in the 1990s, has had only two years of low single-digit decline in real gross domestic product.

One of Krugman's strengths is his talent for analogies that help readers understand economic reasoning. He starts with an analogy, developed by Joan and Richard Sweeney in the February 1977 *Journal of Money, Credit, and Banking*, between a baby-sitting co-op in Washington, D.C., and a large, complex economy.

In the co-op, people earned one half-hour coupon by providing one half-hour of baby-sitting services. At one point there was too little scrip in circulation. Couples would try to earn more scrip by offering to baby-sit. But there weren't enough other couples wanting to go out, because they didn't want to run down their inventory of coupons, and so there was an excess supply of baby-sitting services. This baby-sitting economy with about 150 couples was in a recession.

As Krugman points out, this situation is analogous to an excess supply of goods in a real economy, and thus, he concludes, it shouldn't be hard for people to accept that a much more complex economy in which millions of good and services are exchanged can suffer from lack of demand. The solution that the baby-sitting co-op finally accepted was to print more coupons, and it worked. This is like printing money to get an economy out of a recession, which also usually works.

Land of the Rising Unemployment: In discussing Japan's current anemic economy, Paul Krugman ignores the crucial role of taxes levied in the late '80s and early '90s.

But nowhere does Krugman mention that another way to solve a problem of excess supply is to let prices fall. This missing piece is interesting, given that it was explicitly discussed in the article from which Krugman draws the analogy. The Sweeneys pointed out that because the founders of the co-op economy imposed price controls, decreeing that one unit of scrip must always exchange for a half-hour of baby-sitting services, there would be shortages when demand was too high and surpluses when it was too low. It's not surprising that Krugman left this out: He seems to be biased in favor of having government step in rather than letting markets work things out.

Krugman explains how various countries with previously strong economies have gotten into a mess in the last few years, often prodded to so do by the International Monetary Fund. Take Brazil. Krugman notes that Brazil's economy was starting to do fairly well by 1998 as inflation was cut to moderate levels. But when speculators started expecting Brazil's currency, the *real*, to fall, Brazil asked for the IMF's help in defending the real's value. Harvard economist Jeffrey Sachs has pointed out that the Brazilian government could have instead let the real's value fall, and then Brazil probably would have ended up like Australia, with a currency worth substantially less but with no major economic crisis. Krugman echoes that thought.

Instead, the IMF demanded that Brazil's government keep interest rates high. The IMF also wanted Brazil to reduce its budget deficit by raising taxes and cutting spending. As Krugman notes, the main cause of future budget deficits would be the policies the IMF wanted: Higher tax rates would depress the economy, reducing tax revenues, and higher interest rates on the public debt would increase government spending. Out of nowhere, though, Krugman advocates that Third World governments impose exchange controls, which, he admits, lead to corruption and stagnation.

One of the biggest stories in Asian economies is Japan's slow-to-negative growth in the 1990s. Krugman attributes this anemic record to lack of growth in the

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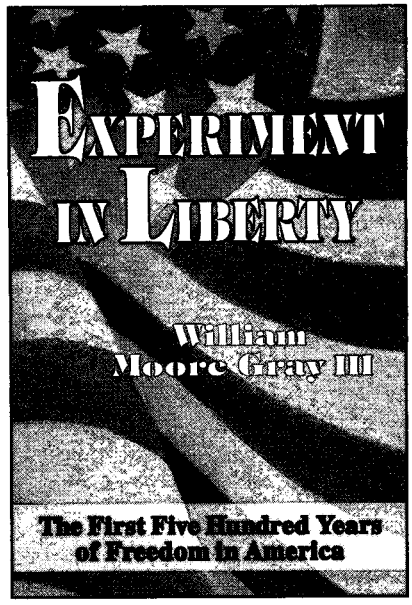

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money supply and claims that the solution is to expand the money supply in order to cause inflation. Mild inflation, notes Krugman, would motivate Japan's consumers to spend more, and more consumer spending, he claims, would boost Japan's economy. He is probably right. Interestingly, though, he doesn't consider some of the other possible causes of Japan's troubles, such as the heavy taxes on land and on capital gains that were imposed in the late 1980s and early '90s with the explicit purpose of "breaking the bubble," i.e., reducing the value of land and of Japanese stocks. Isn't it possible that the taxes worked, and that's a major reason for Japan's poor performance in the '90s?

Krugman correctly criticizes some of his fellow economists for claiming, when they are surprised by an economic change, that it was obvious all along that the change would occur. Unfortunately, he commits the same sin. In his 1990 book *The Age of Diminished Expectations,* Krugman wrote, "By the year 2000...Japan will have a GNP that in dollar terms is 80% or more of the U.S. level." In fact, Japan's real GNP is less than 65 percent of U.S. GNP. Krugman overestimated by more than 20 percent. Yet here's what he says about Japan's economy in his latest book: "The weaknesses of the system were actually evident by the late 1980s, to anyone willing to see."

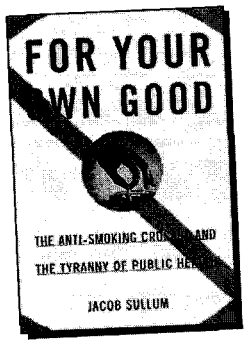
Whenever Krugman discusses supply-side economics, he goes ape, and his latest book is no exception. He says "the specific set of silly ideas that has laid claim to the name 'supply-side economics' is a crank doctrine, which would have little influence if it did not appeal to the prejudices of editors and wealthy men." In this one sentence are displayed three weaknesses that can be seen again and again in Krugman's writing.

First, note the *ad hominem* tactic. Krugman attacks supply-side economics by attacking the motives and objectivity of some of those who believe in it. Supply-side economics may well appeal to some prejudices of some people, but that tells us exactly zero about its merits.

Second, note Krugman's use of the words *silly* and *crank* to describe a view of the world that competes with his. That's Krugman's nasty side, which pops up whether he's attacking those to the right of him or those to his left. By dismissing the views as "silly" and "crank," he saves himself the trouble of telling his readers what is wrong with supply-side economics.

Third, Krugman's sweeping dismissal is not supported by arguments or evidence. Let us distinguish between two versions of supply-side economics. The broad version, which most American economists came to share in the late 1970s, is the view that the supply side of an economy—saving, investment, technological progress, and the size and productivity of the labor force—is what matters for output in the long run. Martin Feldstein, Krugman's and my boss at the Council of Economic Advisers (CEA) when Krugman was the international policy economist and I was the senior economist for health policy, is one of the best-known advocates of this view.

SURGEON GENERAL'S WARNING: This Book Contains Ideas And Information That Are Hazardous To The Health Of The Anti-Smoking Movement.



Under the banner of "public health," tobacco's opponents say the government has an obligation to eliminate smoking. In ***For Your Own Good,*** award-winning journalist Jacob Sullum argues that such a use of state power is illegitimate and dangerous, threatening the freedom of anyone who dares to trade longevity for pleasure.

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"[Anti-smoking] hysteria is more than repugnant, it is false. In *For Your Own Good,* a lucid and superbly researched new book on the antitobacco jihad, journalist Jacob Sullum pinpoints the deceit." — ***Boston Globe***

"Sullum is a thoughtful and remarkably articulate proponent of a position that it behooves all members of the health care professions to understand and contemplate." — ***The New England Journal of Medicine***

Available at bookstores, or visit www.reason.com/owngood.html.

The narrow version of supply-side economics holds that high marginal tax rates discourage production by undermining incentives and that, therefore, when the government cuts marginal tax rates by X percent, taxable income increases and tax revenue falls by well under X percent. This was the view articulated by Arthur Laffer, Alan Reynolds, and other supply-siders during the late 1970s and early '80s. It is a view that Martin Feldstein shares, and it is the version of supply-side economics that Krugman ridicules.

Interestingly, some of the earliest evidence for this view was presented in 1980 by Jerry Hausman, one of Krugman's colleagues at MIT. The most systematic and careful evidence that Ronald Reagan's early-1980s cuts in marginal tax rates caused a huge increase in taxable income, thereby substantially offsetting the reduction in tax revenues, has been presented by Lawrence Lindsey. Lindsey was hired by Feldstein as the CEA's staff tax economist and was Krugman's and my colleague at the CEA during the 1982–83 academic year. Lindsey devoted his Ph.D. dissertation to the topic of Reagan's tax cuts once he returned to Harvard and wrote up his findings in the well-respected *Journal of Public Economics*. One signer of Lindsey's dissertation was Lawrence Summers, currently secretary of the treasury, who was also at the CEA during 1982–83. He is a man for whom Krugman generally shows much respect.

Krugman mentions none of his present and past colleagues' respected academic work that supports the supply-side view. It's much more convenient for him to ignore their findings. Is it possible that he has never taken the time to understand what supply-siders have to say?

Yet Krugman mentions none of his present and past colleagues' respected academic work that supports the supply-side view. It's much more convenient for him to ignore their findings. In a 1993 article Krugman wrote, "Not all real-world questions are interesting—I find that almost anything having to do with taxation is better than a sleeping pill." Yet to appreciate the supply-siders' insights, you must delve into tax policy. Is it possible that Krugman has never taken the time to understand what supply-siders have to say?

Here's a challenge: I will give $100 to the first person who shows me anything close to a methodical examination by Krugman, written before August 1999, of the logic and evidence behind supply-side economics. You should know three things about me before you take the challenge: 1) I think I've read everything on supply-side economics that Krugman has ever written, 2) I'm a man of my word, and 3) I'm cheap.

Krugman seems to believe that the executive branch of government should have a lot of discretion in setting policy. After pointing out that the U.S. Congress refused to approve funds for a bailout of Mexico, Krugman writes: "Luckily, it turned out that the U.S. Treasury can at it its own discretion make use of the Exchange Stabilization Fund (ESF), a pot of money set aside for emergency intervention in foreign exchange markets. The intent of the legislation that established that fund was clearly to stabilize the value of the *dollar*; but the language didn't actually say that. So with admirable creativity Treasury used it to stabilize the peso instead."

Note his words *luckily* and *admirable.* Yet it is this same sort of discretion that, by Krugman's own admission, has often led the IMF to make things worse. Some of the best of Krugman's work supports the view, although he never says it, that discretionary government power is on balance bad. It's hard to read this book with an open mind and feel more confident at the end that giving lots of power to government officials is the best way to maintain economic growth. ◆

Contributing Editor David R. Henderson (drhend@mbay.net) is a research fellow at the Hoover Institution and an economics professor at the Naval Postgraduate School in Monterey, California.

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Gross Out

By Steve Kurtz

The Gross: The Hits, The Flops—The Summer That Ate Hollywood, by Peter Bart, New York: St. Martin's, 311 pages, $24.95

There's probably not a person in the world better qualified to write *The Gross* than *Variety* editor-in-chief and former studio executive Peter Bart. For anyone interested in how Hollywood really works, this book detailing the cinematic hits and misses of the summer of 1998 is well worth checking out. Even though it contains some faulty analysis, was clearly a rush job (it lacks not only an index, but a table of contents), and evinces the breathless style that mars too much show-biz reporting (Bart ends paragraphs with phrases such as, "the days of reckoning were at hand" or "he had assembled the right team that knew how to get the job done and he knew they would bring home the prize"), *The Gross* is still compulsively readable.

That's because Bart is able to get behind the scenes and show the tortuous path each movie traveled to get made. The result is thoroughly entertaining, if occasionally depressing. Bart knows that Hollywood is basically just a big horse race, but one in which most jockeys never get past the gate. Indeed, some of last year's films took 10 (*Godzilla, Small Soldiers*) and even 20 (*Deep Impact*) years to get made.

No matter what the budget, every film production is filled with tales of intrigue and weirdness. Take, for instance, last summer's *Saving Private Ryan.* It started with Don Granger, a Paramount exec who wanted his studio to make a World War II film, though the era was no longer fashionable. Producer Mark Gordon brought in writer Robert Rodat, who wrote a script that attracted director Rob Cohen. Then suddenly (and secretly), Tom Hanks and Steven Spielberg were interested. So when studio chief Sherry Lansing called to greenlight the project with Cohen at the helm, Gordon was put in the odd position of telling her that he wanted to hold off making the picture.

Or consider Warren's Beatty's *Bulworth.* Beatty had a "put" picture—that is, a deal with Twentieth Century Fox to make a film any way he liked as long as the budget stayed under $32 million; but for some reason, no one knew where he got this deal. He definitely had a piece of paper giving him total autonomy, but, according to Bart, no one knew the paper's provenance. (I find this story, widely circulated by the people involved, a bit flimsy. It's more likely that since the film flopped, all the executives were running away from it, trying to absolve themselves of any blame by saying their hands had been tied.)

Then there's *Lethal Weapon IV.* Smoothly run Warner Bros., long the studio of big-budget, big-star hits, had a rotten 1997. Almost every project had failed, and 1998 was shaping up to be no better. Without an obvious blockbuster on the summer slate, they rushed *Lethal Weapon IV* into production, practically writing the script as they filmed it. And to get all the A-list talent they had to pay such huge salaries and give away such high percentages of the gross that it was almost impossible for the studio to make money on the $100 million dollar movie. The film did fine, but seemed to be released more to keep Warner Bros. in the game than to turn a profit.

In *The Gross,* Bart goes beyond toting up how much money a movie makes (or loses). He also lets you know how much the participants make. Spielberg, perhaps the biggest hit maker ever, has a deal that when he directs he gets half the gross once profits reach a certain level. According to Bart, even on films he has only produced, such as *Men In Black* and *Twister,* Spielberg has raked in over $200 million. Top screenwriter Ron Bass is essentially on retainer at Sony Pictures, writing his own stuff and rewriting others' scripts, and guaranteed a minimum of $10 million a year. Jonathan Hensleigh, who wrote *Armageddon* and other hits, has been hired to write a *Jumanji* sequel for $2.5 million; he'll get $1.5 million more if the picture gets made. Some think Hollywood takes itself too seriously, but it's hard not to when you get this kind of money.

Million-Dollar Movie Man: Simply as a producer, Peter Bart reports, Steven Spielberg has raked in more than $200 million.

AP / WIDE WORLD PHOTO

Bart is also more than willing to dish the dirt. (Of course, he tends to do so in the time-honored way: by hearsay, quoting anonymous sources.) For all their commercial or aesthetic success, Bart details the alleged failure of some of Hollywood's top people on the human level. Working with *Titanic* director James Cameron is "like contracting a disease." Chris Carter, creator of *The X-Files* is called "brash and abrasive" and "an ego in search of a human being." Even Spielberg is taken to task for firing writers like he's swatting away flies.

Despite its virtues, *The Gross* is a slip-shod job, full of errors, pad-

ding, and questionable judgments. Why? My guess is, this being a book about the movies of the summer of 1998, Bart and his publisher figured they'd better get it out before the summer of 1999 came around and turned 1998 into just another year. Bart is trying to puff up 1998 into a turning point—as his subtitle puts it, "the summer that ate Hollywood"—when in fact it was no different from the year before or, I assume, the year after. The same essential trends that were visible through the whole decade—e.g., higher production costs, bigger star salaries, wider releasing patterns—simply continued in 1998.

That *The Gross* was a lightly edited rush job is suggested by its annoying repetitions. For instance, on pages 20 and 21, then later on page 298, Bart notes that Paramount's Sherry Lansing can be both very sweet and very tough. On page 94, Warren Beatty says, "*Bulworth* is certainly the most controversial movie I ever made, yet it was the easiest to set up and it was the only one that stayed at the same studio throughout its life." One hundred pages later, Beatty opines, "The irony...was that *Bulworth* was my most controversial movie by far, yet it turned out to be the only one that I didn't have to switch from one studio to another."

Bart notes thrice how it was feared that the release of two meteor films would be a fiasco similar to the release of two volcano films the year before (pages 39, 81, and 88). He states twice that Francis Ford Coppola won an $80 million judgment against Warner Bros. over a version of *Pinocchio* he never got to make (42, 247). And that Ed Limato, Mel Gibson's agent, advised Gibson not to make *Lethal Weapon IV* because the series was tired (115, 303). And that Warner Bros. was reeling by 1998 from flops like *Midnight in the Garden of Good and Evil* and *The Postman* (42, 116). And that director Michael Bay accused Dreamworks' spies of stealing from his movie *Armageddon* (170, 211). Just reading this book once gives you a feeling of déjà vu.

Such slovenly repetition is not as distressing as the outright mistakes. Bart claims, for instance, that Warren Beatty directed *Love Affair;* in fact, it was Glenn Gordon Caron. *Six Days, Seven Nights* is called *Six Weeks, Seven Nights.* He says *The*

I 've made and sold over half a billion suction cups. They stick onto windows if there's nothing between them and the glass. To make better cups, I studied the nothing that should be under the flange of a suction cup. My life boiled down to making better suction cups by learning more and more about less and less. After a decade, I knew more about nothing than anyone. I found myself asking:

"Is this all that there is to my life? Nothing?"

After years of studying nothing, this six word, mind-clearing flash exploded in my mind: *God can program in three dimensions.*

He can program actual shapes, vastly smaller than the motes of dust that float within motes of dust. He did it with a Divine kind of three dimensional fractal geometry. Then, it was reasonable to assume that He and the ranks of sub-programmers (the Hierarchy of Angels) could have compiled the basic shapes into all Creation with amazing speed. He brought things into the formless void faster than a screen-saver can fill a computer screen.

Suddenly, science and faith both made sense. Science is simply the study of the Program. Theology is the study of the Programmer.

Once I understood that God can program in three dimensions, I knew that those who take the Bible literally have rational reasons for their faith. If God can program in three dimensions, the seams of coal, pools of oil, and even the DNA locked into fossils could have been easily programmed in place with a divine kind of replicating fractal geometry.

He went to all that trouble to give us free will. Each of us can freely choose to believe that God is smart enough to make the world in a week. Or, we can choose not to. He has left us intellectually free to decide. Aquinas was right. We can make the right choice through reason.

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Horse Whisperer grossed $7.4 million on its first weekend when he means its third. And when you write a book called *The Gross*, you better get the numbers right. But Bart says *Titanic* made $1.3 billion worldwide, when the correct figure is $1.8 billion. (He later gets this right—was he revising as he went along or was this just a typo?) He claims *Down and Out in Beverly Hills* grossed $38.6 million in the United States when it actually made more than $60 million. He also claims *Home Alone* grossed $188.9 million worldwide when in fact it made more than $285 million domestically.

Then there's Bart's general failure to offer context in discussing the numbers. He'll list the opening weekend figures for a film and pronounce them good or bad without explaining where the expectations came from. Thus, *Bulworth*'s $10.6 million is "drab" and *The Avengers*' $10.7 million is "dismal" while *The Negotiator*'s $10.4 million is "solid." *A Perfect Murder*'s $16.3 million is "respectable" but "hardly...spectacular" and *The Horse Whisperer*'s $14 million opening is "respectable" but not impressive, while *Hope Floats*' $14.6 million is "buoyant" and *There's Something About Mary*'s $13 million is "encouraging." *Mulan*'s $23 million is "respectabl[e] but unspectacular" while *The Mask of Zorro*'s $23 million is "very respectable."

The expectations game is based on a number of factors, including the cost of the movie, the breadth of its release, and its genre. Hence, an opening take of $12.7 million for an action flick like *Out of Sight* is in fact "dim" while $11.8 million for a movie geared to black and female audiences such as *How Stella Got Her Groove Back* is indeed "impressive." A knowledgeable reader may (and then again, may not) understand what's going on, but a novice looking for a clear explication of the grosses will likely be at a loss.

Similarly, Bart's week-by-week analysis of the gross is, to use his terminology, respectable if unspectacular. Over the past decade or so, newspapers and TV shows across the country have been reporting on weekly film grosses. It's become another spectator sport and anyone interested can find out how much films cost and how well they're doing. While Bart's analysis is useful, he offers nothing an interested outsider can't ultimately figure out.

Still, it's exciting to replay what worked and what didn't. Normal math doesn't apply in Hollywood: In 1997, for instance, Hollywood math showed that Harrison Ford (in *Air Force One*) is greater than Harrison Ford plus Brad Pitt (in *The Devil's Own*), and that Julia Roberts (in *My Best Friend's Wedding*) is greater than Julia Roberts plus Mel Gibson (in *Conspiracy Theory*). This is what's exciting about following "the gross" and Bart captures this roller-coaster feeling. Last summer's guaranteed biggest hit—*Godzilla*—was a relative disappointment, while a film no one even saw coming—*There's Something About Mary*—became the most profitable.

There probably is no formula for success, but this doesn't stop the studios from searching for one. Bart does a good job of explaining the different approaches studios take, but he never gets around to actually evaluating their effectiveness. Paramount, for instance, believes in splitting the costs of movies with others. Its investment in *Titanic* was split with Twentieth Century Fox. Paramount's investment was limited to $65 million and its profits limited to domestic take. When the cost of the film ballooned to over $200 million, the deal looked brilliant. Ultimately, when the film broke all box office records, owning only half meant hundreds of millions in lost profit. For some reason, though, Bart simply parrots the company line that Paramount was lucky to avoid the pain and risk that financing the whole thing would have entailed.

Normal math doesn't apply in Hollywood: In 1997, for instance, Hollywood math showed that Harrison Ford (in *Air Force One*) is greater than Harrison Ford plus Brad Pitt (in *The Devil's Own*).

Fox's strategy was to make a number of modestly budgeted films aimed at different demographics, hoping one or two would break out. In other words, the studio diversified its portfolio. Meanwhile, Disney decided to cut back on releases and spend more per film—the opposite of the Fox strategy. Bart reports these two facts but doesn't seem to notice that these strategies are at odds, much less say which one is better. Perhaps this is because no one really knows which will work better until the films come out.

When Bart gets into the quality of the movies themselves, he becomes unnecessarily nostalgic. He goes on a bit about how people really used to care about movies, but that now it's all packaging and profits. To be sure, there have been changes in how Hollywood plans and markets films, but the studios have always been about making money and people have always complained about how bad films are (compared to how they used to be).

Without even getting into low- and medium-budget art films, the slate Hollywood offered in the summer of 1998 was diverse: *Saving Private Ryan, There's Something About Mary, Bulworth, Small Soldiers, The Negotiator, The Avengers, Armageddon, The Truman Show, The Mask of Zorro, Deep Impact, The Horse Whisperer, Mulan, Out of Sight.* You don't have to like all these films (I certainly don't) to recognize most were made by people sincerely striving to deliver solid entertainment, perhaps even art, not cynics just in it for a paycheck.

Despite its weaknesses, *The Gross* remains an interesting foray into Hollywood. When Bart set out to write his book he took as his model *The Season*, William Goldman's work about the 1967–68 Broadway season, where each chapter takes on a different production. Broadway has changed considerably since then, but that book is still delightful, filled with insights that make it worth reading even if it no longer describes how things get done on the Great White Way. It's doubtful *The Gross* will be remembered so fondly 30 years hence. However, while there's a better book waiting to be written about Bart's subject, until it comes out, *The Gross* will do just fine.

Steve Kurtz, a Los Angeles–based screenwriter, fearlessly predicts that Star Wars: Episode I—The Phantom Menace *will be the year's biggest hit.*

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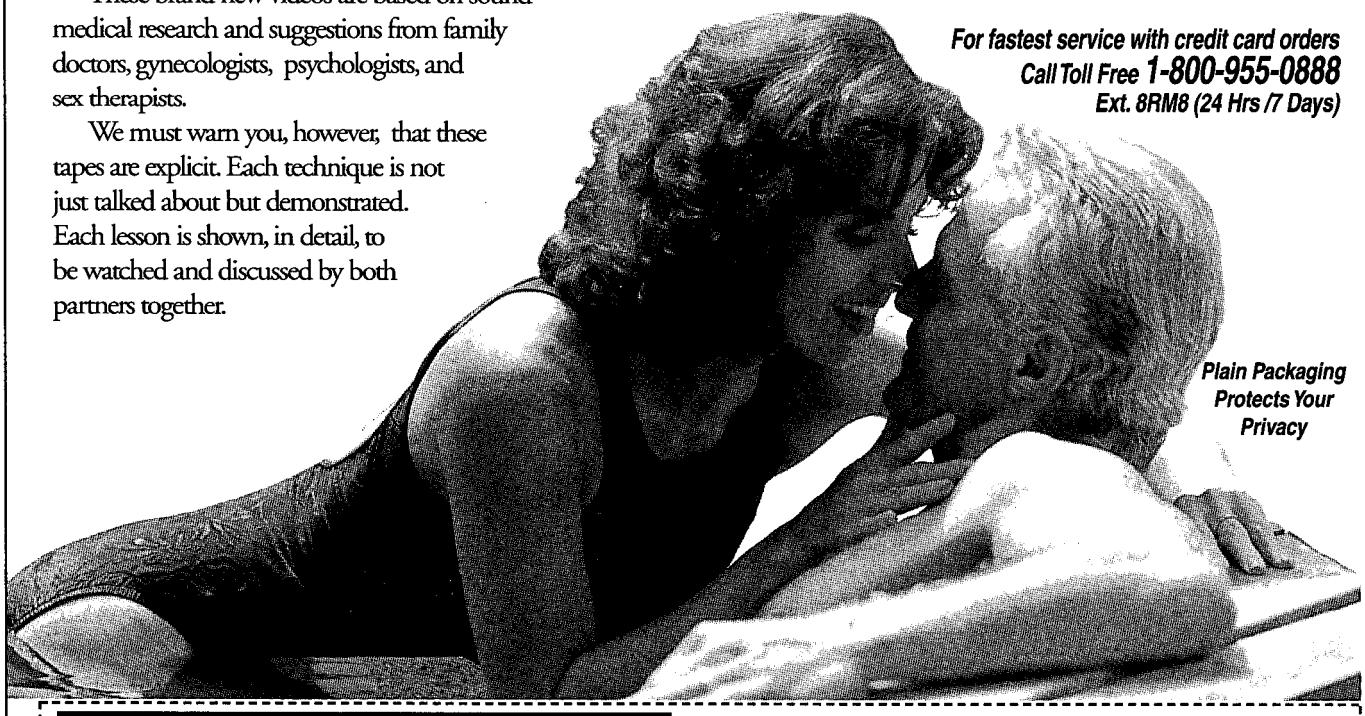

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Tiny Bubbles

Old money and the vision thing

By Thomas W. Hazlett

In the mid-1980s, the United States struggled to keep pace with the Japanese industrial juggernaut. The conventional wisdom went something like this: American capitalism was preoccupied with short-term results. We should follow the lead set by the Land of the Rising Sun, where managers were committed to the long haul. Hence, they made better—i.e., more farsighted—investments and routinely offered lifetime employment opportunities. American firms, in contrast, rewarded executives based on quarterly reports, leading them to ignore the long run and to abandon workers at the drop of an investment analyst's downgrade.

Nippon envy, of course, crashed with the Nikkei Index, which struggles to stay airborne at around 18,000 after soaring upwards of 39,000 a decade ago. The very rigidities lauded as the backbone of Japanese capitalism held the country in the consumer electronics epoch just as the world raced to embrace the dawning era of digital networks.

But note the shift in the contemporary conventional wisdom in the United States: Now, say critics, American capital markets are way too speculative, wildly tossing investment dollars at any cockamamie "dot-com" IPO, whether the company makes money or not.

The grumblings about America's "bubble economy," as *The Economist* likes to call it, are ubiquitous. The old-line pillars at the country club and scruffy intellectuals at sidewalk cafés alike bemoan those wacky Wall Street valuations. "No earnings!" exclaims the clubber. "Paper wealth!" shrieks the intellectual. Both unwittingly point to the most dynamic and progressive element of modern American capitalism: its ability to liquidate obsolete investments at warp speed in favor of promising new ideas. In an era in which so many innovations are being hatched, the transition is awesome to behold.

An online bookstore operated via a Web page? Amazon.com, whose equity value appreciated 966 percent per share in 1998, found itself worth more in January 1999 than all other bookstores in America combined. Wireless telecommunications operator Teligent is worth $4 billion at its NASDAQ share price on July 28, 1999—a staggering 1,681 multiple of sales. Some believe that paying 36 times earnings—the average Standard & Poor's price/earnings ratio—makes stocks outrageously expensive, but others are willing to toss the dice.

This is phenomenal to many, irresponsible to some, the prelude to a crash to others. What is curious is the lack of deference shown toward those brave enough to take risks. Amazon.com may well fail to deliver profits over time, but it has already revolutionized retail markets and driven both online and brick-and-mortar businesses to deliver more to customers. Few critics remember that where financial returns do not ultimately materialize, financiers engage in unintended charitable activity.

Back at the country club, Chauncey and Biff ridicule the fast-buck artists of the New Economy as a bunch of hippies high on capital gains.

Yet this socially useful behavior is mocked and condemned by status guardians in danger of losing their quo. Just offstage, in fact, there is an audible lust for a stock crash. Critics are appalled by Bill Gates and the billionaire boys club of Silicon Valley. Even those who are self-made and bring enormous benefits and wealth to millions of their fellow citizens cannot properly atone for the financial success they enjoy.

Back at the country club, Chauncey and Biff ridicule the fast-buck artists of the New Economy as a bunch of hippies high on capital gains. How dare these pipsqueak upstarts, some without even so much as four generations of landed wealth to their names, surpass the magnificence of Ye Old Money?

It is staggering to observe the rapidity with which capital abandons the crusty old-timers to embrace the daring newbies. Sears is now worth $16 billion and U.S. Steel $2 billion, while Yahoo! is valued at about $28 billion and America Online at $107 billion. These latter companies are considered Internet Blue Chips because they actually have P/E ratios (349 and 171, respectively). Investors are plunking down billions and counting on robust growth—and the luck to survive in the very long run. Investors see a big future in the efficiencies of e-commerce, and if they are right, we will all reap handsome rewards.

Eighty million individual investors in U.S. financial markets will make their mark in dividends and capital gains, and, by doing so, deliver the U.S. Treasury a nice tax bonus (how do you spell *surplus*?). But the rest of us will gain, too. We will get access to better products and a more efficient economy. The resources piled high on entrepreneurs will sort out the technologies and business plans that make sense, filtering unlimited possibilities into an operational leap forward.

The revolution is on, curiously fueled by the same shortsighted capitalists who cared only about the next quarter's earnings in 1985. Now they care nothing about earnings for 40 quarters into the future. Amazing how visionary these myopic dolts have grown. Incredible how shortsighted the conventional wisdom has become.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) is a resident scholar at the American Enterprise Institute and a professor of economics at the University of California at Davis.

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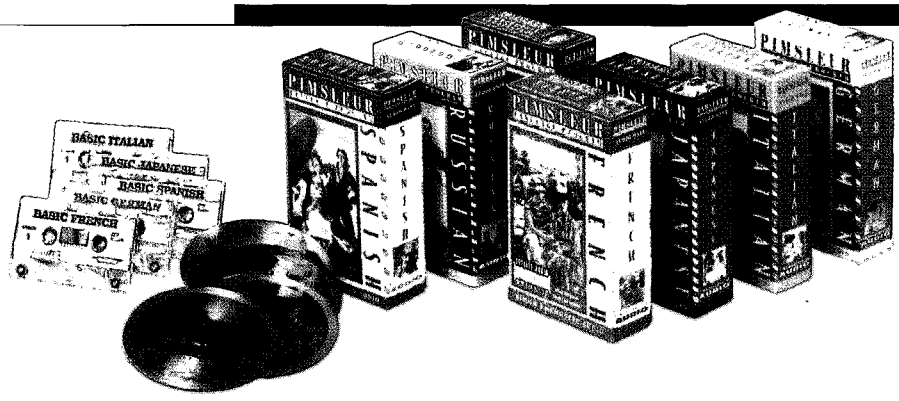

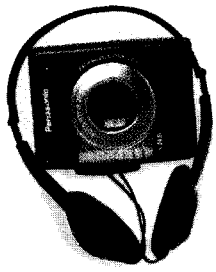

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